

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 3rd day of Dee 2010

Original Application No.1136 of 2007
U/s 19, Administrative Tribunal Act 1985

Hon'ble Mr. S.N. Shukla, Member (A)

Smt. Sonia, Aged about 66 years, W/o Late Radhey Shyam Kushwaha,
C/o Shri S.C. Mandal, F/313-Sector 9, New Vijay Nagar, Ghaziabad (U.P.).
..... Applicant.

By Advocate: Sri S.S. Sharma
Sri R. Sharma

VERSUS

1. Union of India through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Delhi Division, D.R.M. Office, New Delhi.
3. The Deputy Chief Engineer (Construction), Northern Railway, Shivaji Bridge, New Delhi.
..... Respondents.

By Advocate: Shri D.P. Singh

O R D E R

2. Briefly stated the facts are that Late Radhey Shyam Kushwaha retired from Railways on 31.8.1995 on the post of Office Superintendent Grade I in the pay scale of Rs.2,675/- . Payment of pension and other retiral dues were determined on the basis of reduced basic pay Rs.2,126/- after retirement of the employee without affording opportunity to show cause or for that matter without disclosing any reasons to the retired employee. Shri R. S. Kushwaha died on 17.6.1998. Smt. Sonia widow of Sri R.S. Kushwaha is in receipt of a family pension on a basic pay Rs.2,126/- as against Rs.2,675/- which was the last pay drawn by the Late employee on the date of his retirement. Several



representations made by the deceased employee in his life time found no favourable response.

3. The applicant after his selection through Railway Service Commission was appointed as an Office Clerk and posted under Chief Engineer (Construction) till the date of his retirement. He held his lien in the Work Branch of Delhi Division of Northern Railway, initially under administrative control of D.R.M., Northern Railway, Delhi Division, Delhi and thereafter Chief Administrative Officer (Construction) Northern Railway Delhi. In Construction organization employee was promoted as Office Superintendent Grade II in 1985 in a higher grade of Rs.1600-2660 in his parent Division D.R.M. New Delhi. After regularization in the post of Office Superintendent Grade II w.e.f. 1.12.1988 his seniority was revised and he was placed at serial no.5 above D.C. Karmakar at serial no.6 in the seniority list of Office Superintendent Grade II, after revision of seniority as per BPO, Northern Railway, Delhi notice dated 27.11.1996. Subsequently, the employees junior namely Shri D.C. Karmakar and Shri J. R. Verma were promoted and posted as Office Superintendent Grade I in the grade Rs.2000-3200 in Works Branch of Delhi Division (Division and Branch where the deceased employee was holding his lien) and accordingly on representation the deceased employee was also promoted as Office Superintendent Grade I in the grade Rs.2000-3200 from the date of the promotion of his juniors. Admittedly, the deceased employee was on the post of Office Superintendent Grade I in the grade Rs.2000-3200 where he was holding his lien at par with his junior Shri D.C. Karmakar.

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4. Originally monthly pension was fixed @ Rs.1,008 which on representation was revised to Rs.1,063/- by taking the basic pay at Rs.2,126/- (on reduced basic pay) as against a claim of basic pay of Rs.2675/- vide letter dated 8.4.1996 and 01.01.1997 (Annexure A-3 &4).

5. This OA has been filed by the widow of the deceased employee reviewing the claim for higher pension to the deceased employee and consequently higher family pension to the applicant.

This OA is filed seeking the following reliefs:-

“8.1 That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manager, Northern Railway, Delhi Division, New Delhi, Respondents no.2 to revise pension and other retiral dues i.e. commutation of pension, gratuity, leave encashment etc. on the basis of basic pay Rs.2,675/- in grade Rs.2000-3200, which the deceased employee was drawing on the date of his retirement from Railway Service on 31.08.1995 and the balance amount on this account may be directed to be paid to the Applicant.

8.2 That the Hon'ble Tribunal may graciously be pleased to direct the Divisional Railway Manger, Northern Railway, Delhi Division, New Delhi, Respondent no.2to make payment of family pension to the Applicant w.e.f. 18.06.1998 on the basis of revised pension fixed on the basis of basic pay Rs.2,675/- and payment of arrear thereof to the Applicant.

8.3 That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to make payment of interest @ 18% per annum compounded annually on the payment of arrear on account of revision of pension and other retiral dues and family pension as well from the date the amount is due to the deceased employee to the date it is actually paid to the applicant.”

6. Learned counsel for the respondents on the very preliminary stage took an objection against maintainability of the OA on the ground of delay and latches. For this purpose he relied upon the following decisions:-

1. (2008)8 SCC 648-U.O.I. & Others V. Tarsem Singh, Para-4,5,7 & 8.

2. A.I.R. 2007 S.C. 1330-Shiv Das V. U.O.I. & Others, Para 6,9 & 10.

3. A.I.R. 2007 S.C. 1365-N.D.M.C. V. Pan Singh & Others, Para-16,17,18,19 & 20.

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4. (2008)10 SCC 115-C. Jacob V. Director G&M. Para-13,15 & 16.

Some of the extracts relied upon by the counsel for the respondents can be reproduced as under:-

- (a) *Normally in the case of belated approach writ petition has to be dismissed. In an appropriate case the High court may refuse to invoke its extra ordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances.*
- (b) *In the case of pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. (Shiv Dass Vs. Union of India AIR 2007 SC 1331).*
- (c) *Delay and latches are relevant facts for exercise of equitable jurisdiction (New Delhi Municipal Council Vs. Pan Singh) AIR 2007 SC 1316.*
- (d) *Legal representatives of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is essential that before his death, he should have been subjected to screening, and should have been regularized in service, which only enables the legal representatives to claim the benefit of family pension. This will also be subject to the conditions laid down under the provisions of the Railway Service (Pension) Rules, 1993 or circulars issued from time to time.*

7. Perusal of other rulings cited by the counsel for the respondents reveals that no doubt those rulings are on delay and latches. They are not directly or on similar cases as in the OA before this Tribunal. Learned counsel for the applicant also relied upon some rulings of the higher judicial authorities including the Apex Court such as:-

1. 2003(1) SCC 137, S.K. Mastan Bee Vs. The General Manager, South Central Railway & Anr.

"Appellant's husband who was a Gangman in Railway died in 1969 – Appellant who was entitled to family pension could not stake her claim till 1991 on account of ignorance and lack of legal assistance – Her application for family pension rejected – Filed writ petition in 1992 – Single Judge of High Court allowed the writ petition and directed to pay the family pension with arrears from the date of death of her husband – D.B. of High Court though agreed with the Single Judge but confined the benefits with effect from 1992 on account of delay in approaching the Court – D.B. of High Court not

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justified in restricting the benefits of family pension w.e.f. 1992 as it was an obligation of the Railway to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her".

2. 1996SCC(L&S) 1384, S.R. Bhanrale Vs. Union of India and Others.

"Limitation-Generally-Where the retrial benefits and other claims of a retired employee (encashment of earned leave, increment arrears, special pay due, LTC etc. in this case were wrongfully withheld despite numerous representations, raising the plea of limitation by the Government against such claims, held, improper.

3. (1995) 31 ATC 343, Moti Devi Vs. Union of India and Another

"A.Pension-Family pension-Claim for family pension and other retrial benefits-Delay in filing application does not bar claim because it recurs every month Limitation."

7. Having thoughtfully considered the facts of the case, I am firmly of the view that considering that the applicant in his life time itself had been agitating against the fixation of pension reproduced basic pay, only partly redressed through a revised order in response to his representation dated 1.1.1997. He expired within a fear and a half of the revised pension order. Therefore, whatever representations he may or may not have made during these one and a half years, - the delay, if any, is not so large so as to be considered incurable. The wife of the applicant is stated to be totally illiterate and being incapable of understanding the intricacies of mathematical calculation of monetary benefits. She was in no position to make any representations thereafter till she confined her woes before as a friend legal professional who discovered and advised the applicant to file this OA.

8. On the facts of this case the delay in filing of this OA is considered to have been adequately explained and hence condoned.

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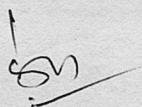
9. For the sake of convenience the stand of the respondents is being discussed first. The reasons justifying the fixation of pension as done is stated to be on the strength of Railway Board Letter No.F(E)III/2007/PN 74 dated 19.10.2007 which clarifies that retiral benefits of the staff promoted on local officiating basis in construction organization shall not be computed on the basis of the emolument drawn in the pay scale to the post to which he has been promoted locally, but on the basis of emoluments that would have been drawn substantively by the concerned staff. It was submitted that Late R.S. Kushwaha was promoted as Assistant Superintendent Grade I w.e.f. 27.06.1985 on ad-hoc basis and his pay was revised in the grade of Rs.1600-2660 from the date his junior Shri J.R. Verma started drawing the same scale. Further that his pay was fixed at Rs.2060 w.e.f. 19.8.1983 as O.S. Grade-I in the scale Rs.2000-3200 and his pay was arrived at 2180 w.e.f. 1.8.1995 and consequently the pension and also the family pension has been fixed as per rule and instructions in this regard. In support of their contentions the reliance was placed on the following decisions:-

"(2006) 11 SCC 157, Indian Council of Agricultural Research and

Another Vs. Santosh held as under:-

Service Law-Pension-Family Pension-Widow of a casual labourer, who had acquired temporary status under Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, claiming family pension on ground that her deceased husband having worked for 20 years, must be deemed to have been in regular service of the appellant even in absence of a formal order granting him permanent status-CAT accepted that the widow was entitled to family pension by treating her deceased husband as having been regularized in service on the date of his death-Held, CAT's view erroneous as merely on the basis of length of service of her deceased husband on temporary status it cannot be deemed as if he had been regularized-Further, compassionate appointment granted by appellant to legal heir of the deceased after his death, even if accepted to be regular, that would not alter the status of the deceased in service-Therefore, respondent widow not entitled to family pension.

Legal representatives of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is



essential that before his death, he should have been subjected to screening, and should have been regularized in service, which only enables the legal representatives to claim the benefit of family pension. This will also be subject to the conditions laid down under the provisions of the Railway Service (Pension) Rules, 1993 or circulars issued from time to time.

Learned counsel for the applicant on the other hand relied upon the following decisions:-

1. OA No.1081 of 2004 in the case of Moti Chand Vs. Union of India and Others

"8. Admittedly, the applicant was working as a clerk, though on ad-hoc basis, in the ex-cadre Railway Service (Pension) Rules, 1993, referred to by the counsel for the applicant, the emoluments for the purpose of calculating various retirement and death benefits means the basic pay as defined in clause (1) of Rule 1303 of the Code which Railway servant was receiving immediately before his retirement or on the date of his death. Admittedly, the applicant was in receipt of the basic pay of Rs.4110/- on 30.06.2003 at the time of his retirement. While considering the aforesaid facts, the Respondents have only stated that the pay was fixed erroneously and it should be only Rs.3800/- as per cadre position of open line. In none of the rules of Railway Service (Pension) Rules, there is any reference of pay drawn in the cadre. As per Rule 1303 (FR-9) (a) 'means the amount drawn monthly by a Government servant as pay other than special pay or pay granted in view of the personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reasons of his position in a cadre. Accordingly, we find force in the pleadings of the applicant and we allow the O.A. with regard to the first plea namely, that his pay should be Rs.4110/- for the purpose of calculating the pension.

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13. The OA, therefore, succeeds.

2. OA No.1005 of 2004 in the case of Satya Nand Srivastava Vs. Union of India and Others



What should be the pay scale at the time of retirement of an individual who was hitherto been working in an ex cadre post, retaining his lien in the parent department, is the sole question for consideration in this case.

According to the applicant, his pay was reduced from Rs.8,700/- to Rs.8,300/- by the respondents and consequently, his pensionary benefits have been depleted and in addition the respondents had sought to recover an amount of Rs.50,323/-. It is this act of the respondents that has been agitated by the applicant.

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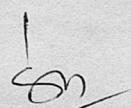
3. 2005(2) SC 142, in the case of Bhadei Rai V. Union of India and Others.

"(A) Adhoc Promotion – Regularisation-Reversion – Pay Protection – Appointment made in railway on daily rated as Khalasi in 1979 – Temporary status given w.e.f. 1-1-1982-Adhoc promotion given on 31.3.1985 to the post of Riggor which is a Group 'C' post-Continued as such till 1999 – Impugned order of absorption/regularization to Group 'D' post with lower pay scale issued after 20 years – Whether employee concerned entitled to regularization – No – No infirmity in the order of reversion – However employee concerned entitled to pay protection and consideration for promotion to Group 'C' post in his turn."

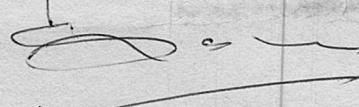
4. AIR 2005 SC 2531, in the case of Badri Prasad and Others Vs. Union of India and Others.

"Constitution of India, Art.16-Ad hoc promotion for long years- Subsequent order of reversion-They cannot be regularized on promotional post – However, benefit of pay protection, age relaxation and advantage of experience for consideration for promotion granted to them as their legitimate claim."

9. Heard counsel for the parties and perused the materials on record and after very careful consideration of the facts of the case this Tribunal has no hesitation in holding that the applicant's case is covered by the decisions cited above. The OA is, therefore, succeeds. The respondent no.2/3 are



directed to re fix the pension of the applicant on the basis of last basic pay drawn at Rs.2675 and also revise the order on family pension accordingly. The arrears on account of revised pension be paid with an interest at the rate of 8% PA starting from the date of payment of pension and ending with the date of this order. The family pension would be paid without any interest following the observations of the Hon'ble Supreme Court in *U.O.I. Vs. Tarsem Singh (2008) 8 SC 648*. The order of this Tribunal will be complied within three months of receipt of certified copy thereof. The OA is allowed by modifying the relief on interest as directed above. No Costs.


Member-A

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