

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10th DAY OF JULY 2009)

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

Original Application No. 923 of 2007

(U/S 19, Administrative Tribunal Act, 1985)

Smt. Abad Begum W/o Late Sri Ateeque Ahmad R/o 75, Dandipur, Allahabad.

..... *Applicant*

Versus

1. Union of India through Regional Manager, N.C.R. Allahabad.

2. Union of India, through Divisional Railway Manager North Central Railway, Allahabad.

3. Senior Divisional Commercial Superintendent Allahabad. *Respondents*

Present for Applicant : Shri R.S. Mishra
Shri R.K. Mishra

Present for Respondents : Shri S.K. Rai

O R D E R

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

By means of this Original Application, the applicant has claimed for a direction to the respondent no.2 to pay the pensionary benefits and retiral dues from the date of her death of her husband. The applicant is the widow of Late Ateeq Ahmad, who was working as Khalasi in S. and T. Department. Husband of the applicant died on 23.01.1993, leaving behind him Four sons and Three daughters. The applicant has already preferred representations dated 23.01.1993, and representation dated 20.01.2007.

2. Shri R.K. Mishra, learned counsel for the applicant would contend that since family pension and retiral dues are recurring cause of action,

the question of limitation may not come in his way. Reliance has been placed on the decision rendered by Hon'ble Supreme Court in **2007(1) ESC-57 (Shiv Das Vs. Union of India)**, Hon'ble Apex Court has held that in case of pension cause of action actually continues from month to month and the grievance of the applicant cannot be overlooked on account of limitation. It is also submitted that the husband of the applicant was a confirmed and regular Class-IV employee of Railways.

3. In the counter reply filed by the respondents it is clearly stated that the Provident Fund amounting to Rs.16,896/- and Gratuity amounting to Rs.6078/- has already been paid to the applicant. According to the respondents the family pension is admissible to the family of deceased Railway Servant under Rule 75 of the Railway Service (Pension) Rules, 1993. Substitute employees are not covered under the definition of a Railway Servant under Rule 3(26) of the Railway Services Pension Rules, 1993. By filing Annexure R-3, respondents have rejected the claim of the applicant mainly on the ground that he was not a regular employee of the Railways.

4. Learned counsel for the applicant stated that the applicant has neither received gratuity nor provident fund, as yet, but there is no such statement of fact either in the form of Original Application or in the Rejoinder reply. Learned counsel for the applicant also contended that as the applicant has worked for more than 28 years regularly, he cannot be deprived of the benefit of family pension.

5. Learned counsel for the respondents stated that the applicant was merely a substitute. Although he has worked for several years but under the provision of pension rules, he is not entitled to get family pension.

✓

6. I have heard the argument advanced by the parties counsel. The facts of the case enumerated in the pleadings are not very clear and specific. The applicant was appointed as Casual Labour on 11.02.1965 and he continued to work as such till his death in the year 1993. It has been argued by the learned counsel for the applicant that the applicant is entitled to get family pension. Learned counsel for the applicant has also placed reliance on the decision of Allahabad High Court reported in **2008 (3) ADJ 312 (Preetam Prasad VS. State of U.P. and Ors.)** with a view to buttress the contention that since the applicant has already put in more than 28 years of service without any break, he is entitled to get pension.

7. Having heard parties counsel at considerable length, I am firmly of the view that the grievance of the applicant might be redressed in case a direction is given to the applicant to file a detailed and comprehensive representation along with the Rules and Circular and latest decision on the point within a period of two weeks from the date of receipt of copy of this order. If such representation is received by the Competent Authority

Anjan Delekha
Anjan i.e. Senior Divisional Commercial Superintendent Allahabad, same shall be considered and decided by him by a reasoned and speaking order taken into account the grievance of the applicant, and pass appropriate reasoned and speaking order within a period of three months, from the date of the receipt of copy of this order. If the applicant is found to be entitled, she may be granted family pension and retiral dues, which are not already given to him as per rules.

8. With the aforesaid observations the O.A. is disposed of.

//Sushil//

Anjan
Member-J