

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 5 of 1986

198

~~RAO NO.~~

DATE OF DECISION 22-5-1987

Anandrao. K

Petitioner

Mr. G.K. Badheka

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent

Mr. D.K. Vyas

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman

The Hon'ble Mr. P.M. Joshi : Member Judicial.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

(7)

JUDGMENT

OA/5/86

22/05/1987

Per .: Hon'ble Mr. P.H. Trivedi : Vice Chairman.

This petition has been filed under Section 19 of the Administrative Tribunals Act, 1985 by Anandrao K. His son Sanjay was working as Khalasi in the Scale of Rs.196-232 on pay of Rs.208/- p.m. under Loco For-eman at Jetalsar in Bhavnagar Division. He died in service on 13/11/1985. He had joined service on 26/11/1976 and Provident Fund was being recovered from him till he expired. He was screened for regular absorption as stated during the hearing on 19/5/1984. But, due to no fault of his orders were not issued appointing him in a regular capacity. In 1977 premium of Rs.5/- per month was being deducted towards Group Insurance Scheme for about six months but thereafter it was stopped. The petitioner has therefore claimed Rs.10,000/- towards Group Insurance Scheme with interest at the rate of 9% until it is actually paid. He had made representations dated 3/2/1986 and 18/2/1986 and he has been informed that these representations are rejected. A copy of the reply dated 4/8th April, 1986 is annexed. Letter from the Western Railway dated 29/5/1980 confirming grant of temporary status on the petitioner's son Sanjay with effect from 2/3/80 has also been annexed. with the petition. The respondent's case briefly is that the petitioner's son Sanjay is not entitled to the benefit of Group Insurance Scheme as he was working as a substitute and not in a permanent capacity. The substitutes are entitled on completion of four months' service to the acquisition of temporary status but this does not entitle them to regular service unless they are placed on the select list as stated in para 2318 of the Indian Railway Establishment Manual. They are required to be screened by Screening Committee which notify a list of successful candidates. There is a dispute regarding how the seniority is to be reckoned and the matter was taken up in the courts as there is a difference in the practice adopted by the

Railways and the interim orders given by the courts. The respondents admitted that Screening has been done but as it has not been operated and the issue regarding seniority is yet to be decided, the result is kept in abeyance and the petitioner's son has not been appointed on regular basis. The respondents also contend that they do not know who are the legal heirs and successors of the deceased. The respondents also contend that before the Group Insurance Scheme was brought about in 1980 the Railway Employees Insurance Scheme was operated but substitutes are not covered in this scheme.

2. After hearing the learned advocates we consider that in this case, there are circumstances which require the railway as an employer of a larger labour force to be guided as much by reasons of compassion as of legal rights particularly because delay in confirming regular status has not been due to any fault of the deceased employee. It is true that the Group Insurance Scheme was not in force when deductions of Rs.5/- per month were effected in 1977. The respondents have stated that whenever such deductions were made they were erroneously made and instructions have been issued for their refund, but it is not a matter which can be closed by merely refunding the amounts deducted. The respondents have admitted that there was a Group Insurance Scheme which was operational under a different name viz. Railway Employee Insurance Scheme in 1977. The screening of the deceased employee had not then taken place and the date of giving effect to temporary status granted viz. 2/3/1980 is subsequent to the period in which deductions were made. In 1980 if the issue of how seniority should be counted had not been tied up in courts of law a panel would have been given effect to. We do not know whether the deceased was placed on the panel but there is reason to believe that if temporary status was granted to him in 1980 he would have been entitled to be given the regular appointment, had a panel been published. There is no

reason why the respondent could not have made a statement regarding the result of the screening test, but he has admitted that such a test was held and as he has not stated in terms that the deceased employee had not succeeded, there is reasonable basis to conclude that the deceased employees' name was in the panel. Had this panel been published and had regular absorption thereafter taken place in due course, the deceased employee would have been eligible to the benefits of the Group Insurance Scheme. However, we cannot give the benefits of this scheme to the deceased employee when no deductions in that scheme have taken place since 1980 and the claim under the Group Insurance Scheme therefore cannot be admitted. However, the petitioner has a claim under the earlier scheme on the basis that some deductions has been effected even if erroneously and that such a deduction has been effected not once or twice but consecutively for six months according to the petitioner and this has not been specifically disputed by the respondents. This is, therefore, a fit case when the strict letter of the entitlement should be extended in spirit and the deceased employee who was not married and who has left his old parent and unmarried sisters could be assisted. We refrain from putting a figure on the appropriate amount that should be given in such circumstances. General Manager and the Railway Board have sufficient powers to give appropriate amount ex-gretia in such circumstances if due weight is placed upon the unfortunate delay in publication in screening test and conferring of the regular employees' status and on the fact that deduction were effected in 1977, an appropriate payment could be paid even ex-gretia. We direct that the representation of the petitioner should be accordingly considered by the respondent authorities and an appropriate decision made within a period of two months and reported to this Tribunal.

Dm