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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 310 OF 1991.

Ex. No.

DATE OF DECISION 14.5.1993

Smt. Lilawati, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

The Hon'ble Mr.

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 ? ✗

Smt. Lilawati
W/o. Late Shri Jawahar Lal
C/o. Shri Ramendra Tiwari,
Waterman,
Gandhidham Railway Station,
Gandhidham.

..... Applicant.

(Advocate: Mr. K.K. Shah)

Versus.

1. Union of India,
Notice to be served through
General Manager,
Western Railway,
Churchgate, Bombay.

2. D.P.O., Ajmer Division,
Western Railway,
Ajmer.

..... Respondents.

(Advocate: Mr. B.R.Kyada)

J U D G M E N T

O.A.No. 310 OF 1991

Date: 14-5-1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. K.K. Shah, learned advocate for
the applicant and Mr. B.R.Kyada, learned advocate
for the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by one
Smt. Lilawati w/o. one Late Shri Jawahar Lal, who
died in harness while in service of Railways, claiming
the family pension with consequential benefits and
various benefits as admissible to her on the ground
of her husband's death and also for a declaration
that the order dated 5th July, 1990 passed by the
respondents be quashed and set aside. It is the

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case of the applicant that she is widow of Late Jawahar Lal, who died on 29th April, 1972. The applicant's husband was employed under the Railways as Transportation Khalasi at Gandhidham Railway Station of Ajmer Division of Western Railway. It is alleged by the applicant that her husband had entered the railway service as casual labourer on 15th October, 1968 and continued to work upto 29th April, 1972 in various capacity as per letter dated 13th June, 1988 of Station Superintendent, Western Railway, Gandhidham produced at Annexure A-1. It is alleged by the applicant that her husband was working as permanent khalasi when he died in harness on 29th April, 1972 as found from that Annexure A-1. The applicant alleges that after the death of her husband, a Welfare Inspector did visit her house, filled in certain forms and got her thumb impression in some paper but nothing was done thereafter in the matter. She therefore, submitted an application dated 11th June, 1990 vide Annexure A-2 to the Divisional Personnel Officer, Ajmer Division, Ajmer requesting him to sanction ex-gratia pension in favour of the applicant, but the said request had been rejected by the D.P.O, Ajmer stating that the employee concerned was governed by pension scheme and hence no ex-gratia pension is permissible. The applicant has produced the impugned order Annexure A- dated 5th July, 1990 in which it is mentioned that the employee was under

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pension scheme and as the employee was not confirmed, the question of family pension did not arise and hence this application is filed by the applicant.

It is the case of the applicant that her husband had rendered more than one year continuous service in the Railway Department before his death on 29th April, 1972 and hence the applicant became entitled to the DCRG as admissible in view of the para 703(b) of Chapter VII of Manual of Railway Pension Rules, 1950.

3. The respondents have filed reply contending that the applicant's husband was working as Transportation Khalasi under the Station Superintendent, Gandhidham, that he was engaged as substitute khalasi with effect from 31st January, 1969 and thereafter he was granted temporary status with effect from 31st July, 1969 and then he was made regular employee after screening on 1st December, 1971. It is contended by the respondents that at the time of the death, the applicant's husband was working as temporary khalasi and not permanent and that he was regularly appointed after screening and he had served only for 8 months and 28 days as a regular employee and then he cannot be considered as confirmed employee at the time of his death. It is contended that for grant of pensionary benefits the applicant's husband must be a confirmed employee as per para 308 of MCPR, Item No. VII and therefore the applicant is not eligible for the grant of pensionary benefits. The applicant

has filed rejoinder controverting the contention taken by the respondents in the reply.

The application was

3.A. / admitted on 13th November, 1991 after hearing the learned advocate for the applicant and the learned advocate for the respondents and therefore, now there is no question of limitation in this case. More over this matter is regarding the pensionary benefits to the widow of the deceased Railway employee and hence also the question of limitation would not arise. Therefore, I proceed to decide the case on merits.

4. The document Annexure A dated 5th July, 1990 produced by the applicant shows that the D.P.O has rejected the question of granting ex-gratia pension because the applicant's husband was under pension scheme and the applicant was not granted family pension because according to the respondents, the applicant's husband was not confirmed. The respondents in their reply have relied on Rule 308, Item No. VII of the Manual of Railway Pension Rules, 1950. This rule 308 deals with the case in which pensionary benefits are not earned at all. Item No. VII of Rule 308 is one of the cases in which pensionary benefits are not earned at all where under a covenant or a contract which does not specifically provide for grant of pensionary benefits. It does not say that unless the employees is a confirmed employee, he can not get the pension even if he dies in harness. On the contrary Rule 801 of Chapter VIII of this Manual says that

a family pension, at the rate specified in sub-para(2) or (3) below as the case may be, may be sanctioned to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who entered service on or after 1st January, 1964 or having entered service prior to that date has opted or is deemed to have opted for this scheme in terms of Railway Board's letter dated 2nd January, 1964, if such a Railway servant dies while in service on or after 1st January 1964, after completion of not less than one year's continuous service. More over in the judgement in Smt. Malati Kar & Ors. V/s. Union of India & Ors., reported in 1992(1) ATJ page 543, the reference is made to Railway Board's letter dated 8th June, 1981 regarding entitlement and privileges admissible to temporary railway servants who are treated as temporary after 120 days continuous service and the reference is also made to Para 2311 of the Indian Railway Establishment Manual, 1968 edition, and Rule 101(2) of the Manual of Railway Pension Rules, 1950 regarding grant of family pension to a temporary railway servant. The Tribunal has also referred to the decision in Robert D'souza V/s. Executive Engineer, Southern Railway, (AIR 1982 SC 54) and it was held that the deceased casual employee had to be treated as a temporary railway servant till the date of his death in 1983, having been granted temporary status from 1979 and allowed the application and the family pension

to the widow was granted. Therefore, it is not necessary that the employee should be confirmed before he is entitled to the pensionary benefits and the contention of the respondents that the employee must be a confirmed employee as per Para 308 of Manual of Railway Pension Rules, 1950 to be eligible for grant of pensionary benefits is rejected.

5. The applicant has produced at Annexure A-1 letter dated 13th June, 1988 of the Station Superintendent, Western Railway, Gandhidham, which is more or less certificate showing the period and the nature of work done by the applicant's husband. It shows that the applicant's husband worked as casual labourer from 15th October, 1968 to 30th January, 1969, worked as temporary status candidate Class IV from 31st January 1969 to 16th November, 1971 and worked as permanent khalasi from 17th November, 1971 to 28th April, 1972. Though the respondents in the reply contended that the applicant was engaged as a substitute khalasi from 31st January, 1969 and he was granted temporary status with effect from 31st July, 1969 and was made regular employee after screening on 1st December, 1971, the respondents have not produced any documentary evidence of service record of the applicant nor have contents of specifically denied the document Annexure A-1, hence relying on it, it can be concluded that the applicant's husband had acquired temporary status from 31st January, 1969 and

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at the time of his death he was a permanent khalasi. The respondents' contention that the applicant's husband served only for 8 months and 28 days as regular employee ^{view} can not be accepted in/of the documents Annexure A-1 on it and there is no reason not to rely/in absence of documentary evidence produced by the respondents in the case of the applicant's husband. The reference is made in Affidavit-in-Rejoinder by the applicant to Rule & 2311 (3)(b) of the I.R.E.M., 1968 edition, which reads as under:

"The widow/widower/minor children of a temporary Railway servant, referred to in the proceeding sub-para, who dies while in service, after a service of not less than one year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules."

So far the grounds of gratuity etc. is concerned, the respondents have to consider the case as per rules applicable to the applicant.

6. Reading of Rule 2311(3)(b) of the I.R.E.M. and 1950 para 801 of the Manual of Railway Pension Rules/show that the widow of the temporary railway servant is also entitled to the Family Pension, if the said employee has died while in service and after a service of not less than one year continuous service. The applicant in rejoinder has also referred to the OM PIC-1 dated 16th April, 1987 which is in referred to/Railway Board's order 1987 Part-I in Bahri's book. Considering the applicant's documents

on record I hold that the respondents should consider the question of giving family pension to the applicant even if her husband was a temporary railway servant at the time of his death. If the applicant's husband has put in service for not less than one year, it would make the applicant eligible to get family pension under para 801(1)(i) read with para 101(2)(b) of Manual of Railway Pension Rules, 1950. The respondents may also consider to give other pensionary benefit to the applicant if the applicant's husband was eligible to get that benefit at the time of his death. Hence I pass the following order.

ORDER

7. (i) The application is partly allowed. The respondents are directed to consider the claim of the family pension to the applicant if the applicant's husband who died while in service had put a service of not less than one year continuous service as provided in paras 801 and 101(2)(b) of the Manual of Railway Pension Rules, 1950 and Rule 2311(3)(b) of I.R.E.M, and if she is entitled to the same the respondents should calculate it and pay it along with arrears from the date of death of the applicant's husband within four months from the receipt of the order of this Tribunal.

(ii) The respondents may also consider the claim of death gratuity if it is admissible to her according to Rules applicable to the applicant's husband who died in harness.

The application is disposed of accordingly with no order as to costs.

R.C. Bhatt
(R.C. Bhatt)
Member (J)

etc.