

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.28 of 1994.

Date of decision : August, 22, 1994.

Mairun Bibi

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Applicant.

Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

..... MEMBER (ADMINISTRATIVE)

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For the applicant ... M/s. Antaryami Rath,
A.C. Rath, Advocates.

For the respondents ... Mr. L. Mohapatra,
Standing Counsel (Railways)

CORAM:

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

ORDER

H. RAJENDRA PRASAD, MEMBER (A), Sri Mohammed Usman joined the Railways as Khalasi on 25.12.1964, became Storeman on 24.2.1974, a skilled labourer on 24th December, 1980, and passed away, without attaining temporary status, on 9th January, 1984, leaving behind a family comprising a wife, three sons and a daughter.

2. The widow of the deceased Railway employee - the applicant in the present case - approached various authorities praying for the grant of family pension and gratuity, besides a suitable appointment on compassionate ground for her eldest son. No reply was received from anyone. The applicant has, therefore, filed the present application praying for the very same reliefs. The ^{initially} application suffered from the defect of multiple claims

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and reliefs; this defect has since been rectified by the payment of additional fee.

3. The respondents state that :

- i) Md. Usman was appointed, not on 25.12.1964 as stated by the applicant, but on 4.8.1972;
- ii) the concession of granting family pension and gratuity, or offering appointments to the dependents of deceased Government servants, were not available to casual labourers at the time of Usman's death;
- iii) only gratuity was payable to the heirs of deceased official, on execution by such heirs of certain documents -^a condition which has not so far been fulfilled by the applicant; and
- iv) the applicant has not exhausted " all the forums " before filing this application.

4. To take the last point first, it is not clear how the applicant has not ' exhausted all forums'. It is seen that she has represented to virtually every authority in the Railways viz., District Engineer, Chief Engineer, Chairman, Railway Board besides the Railway Minister, in the matter. In fact, her grievance is that she has not received any reply from any of the authorities. Under the circumstances, the plea of not exhausting " all forums", by which is meant all available remedies, is untenable and therefore not accepted.

5. Coming to the facts of the case, no dispute exists as regards the basic aspects thereof except that, according to the respondents, the date of initial appointment

of the applicant was 4.8.1972 and not 25.12.1964, as stated by the applicant. As against this, the copy of Record of Service annexed to the application by the applicant shows that Md. Usman's initial appointment was on 25.12.1964 as originally stated by the applicant. The respondents have not given any reason for questioning the date given by the applicant except making a passing reference to it in paragraph 3 of their counter. Under the circumstances, the applicant's statement on this aspect has to be accepted as correct.

6. Be that as it may, the question really is not whether Mr. Usman was engaged initially in 1964 or 1972. The basic issue is that he had served the Railways for a considerable period; he was also entitled to be given a temporary status, but passed away, unregularised, in 1984. The question which assumes relevance, therefore, is whether or not his widow is entitled to family pension. ^{with} This issue has been dealt ⁱⁿ several cases adjudicated by the Calcutta Bench as well as this Bench of the Tribunal. Some of the cases are :

ATR 1992(1) CAT 141(Malati Kar & others vrs. Union of India & others)

OA 207 of 1990(Sukanti & another vrs. Union of India and others)

OA 397/92 (Seba Bewa & others vrs. Union of India and others)

OA Nos. 56, 57, 87, 165, 166, 167 and 168 of 1994.

In all these cases the facts are exactly the same, and the arguments presented on behalf of the respondents

were no different from those given in the present application. Consequently, the findings and directions ^{or issued} cannot possibly be different from those arrived at in the earlier cases. In other words, this case is fully covered by the judgments delivered in the original applications cited above.

7. In the light of what has been stated above, it is to be held that Shri Md. Usman, formerly skilled Mistry in the South Eastern Railways, is deemed to have been regularised in service with effect from 19.1.1984, viz., the date of his demise. The entitlements of his widow with regard to family pension and other retiral benefits shall have to be calculated on this basis and disbursed to the applicant within 120 days from the date of receipt of a copy of these orders.

8. As regards the applicant's request for appointment of her son on compassionate grounds, the respondents may cause an enquiry as to the indigence and/or monetary circumstances of the family. The case may thereafter be considered on the basis that deceased Government servant, Mr. Usman has been held to have been a regular employee on the date of his death. In considering the case, it would be desirable to keep the views of the Hon'ble Supreme Court in the case of Sushma Gosain (reported in AIR 1989 SC 1976) . The relevant paragraph of Hon'ble Supreme Court's judgment in the said case is reproduced below:



" We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. "

9. A suitable decision may be taken and communicated to the applicant within the same date indicated in para 7 above.

10. Thus, the case is disposed of. No costs.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 1994/Sarangi.Sr.P.A.
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..... MEMBER (ADMINISTRATIVE)

22 Aug 94.
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