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O.A. No. 181 of 2007

Order dated: 01.12.2008

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

We have heard Mr. B.B. Dash, Ld. Counsel for the applicant and Mr. O.N. Ghosh, Ld. Counsel for the Respondents.

2. Challenging Annexure-A/7 order dated 31.03.2007, this O.A. has been filed by the applicant praying that she may be given the pension of her husband who died in harness during 1980. The applicant had approached this Tribunal on prior occasions including by filing O.A. 877/06. The above O.A. has been disposed of by this Tribunal directing the DRM/KUR to dispose of the representation dated 16.08.2006 regarding her claim. After the disposal of the aforesaid O.A., this impugned order has been passed.

3. We have gone through the entire averments of the O.A. and heard Ld. Counsel for the either side.

4. The claim of the applicant is that since her husband was working as a CPC Khalasi under the BRI/BHC, Bhadrak expired on 16.04.1980, she is entitled for the family pension of her husband. The triumph card of the applicant for claiming the pension is Sub rule 3 of Rule 18 of Railway Servants (Pension) Rules, 1993. A plain reading of the above sub rule would show that "in the event of death in harness of a temporary railway servant, his family shall be eligible to family pension and death gratuity

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on the same scale as admissible under these rules". The applicant further relies on the order of this Tribunal passed in O.A.No. 107/02 by which the similar claim was allowed by this Tribunal and the said order was confirmed by the Hon'ble High Court Orissa in Writ Petition © No. 6770/05.

5. To the above claim, a counter affidavit has been already filed for and on behalf of the Respondents, in which the stand taken is to the effect that since the husband of the applicant was not a temporary railway servant, as defined under the provisions of Railway Establishment Code, she is not entitled for pensionary benefits. That apart, it is further stated in the counter that after the death of her husband, she had also applied for compassionate appointment on getting all other benefits available to the deceased employee and she also retired from service. It is further stated in the counter affidavit that ~~since~~ the husband of the applicant ^{had never} worked as a temporary hand in the Railway, he worked only as a casual CPC Khalasi under the Bridge Inspector, Bhadrak(BRI/BHC). Further, it is stated in the counter in paragraph 7 to 9 as follows:

" 7. That, the averments made in para-4.5 of the O.A., are not correct, hence denied. It is humbly submitted that the death certificate said to have been submitted to AEN-I, Cuttack has actually been submitted to the Bridge Inspector, Bhadrak on 26.04.1980. It is also evident from Annexure-A/3 to the O.A.

8. That, in reply to the averments made in para-4.6 of the O.A., it is humbly submitted that the formation of East Coast Railway is a policy decision of Ministry of Railways, Govt. Of India, as such this verificant has nothing to comment on that.

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9. That, the averments made in para-4.7 of the O.A. are not correct, hence denied. It is humbly submitted that the applicant has never worked as Khalasi Helper from 5.5.1981. The applicant has rendered Casual service from 5.5.81 to 22.11.1995 and subsequently, the service of the applicant was regularized on 23.11.1995 as Khalasi. The applicant retired on 30.04.2006 as Khalasi Helper and 50% of the Casual Service has been taken into account for calculation of pensionary benefits."

6. On anxious consideration of the rival contentions raised, the question to be decided is whether the applicant is entitled for her claim or not? Admittedly, the husband of the applicant was an employee as a casual khalasi and not employed as either temporary employee or even assigned any status of temporary employee. Rule-23 of the Railway Services Pension Rules (RSPR), 1993 reads that "Railway servant means a person who is a member of a Railway service or holds a post under the administrative control Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of Railway Board but does not include Casual Labour or persons lent from a service or post which is not under the Administrative Control of Railway Board to service or post which is under such Administrative Control".

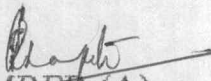
A plain reading of the above would clearly show that Railway Servants, even a temporary servant is entitled for pensionary benefits but, at the same time, we are of the view, that a casual employee who was not assigned a temporary status, is not entitled for any pensionary benefits. Apart from that, the applicant approached this Tribunal only

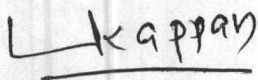


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after the lapse of more than 27 years of death of her husband and that delay has also ^{been} considered by this Tribunal, but without condoning the same, the matter was further referred to the DRM for disposal of the representation filed by the applicant. Only on the direction given by this Tribunal, now Annexure-A/7 order has been passed. Annexure-A/7 order would show that the cases relied on by the applicant are not similar to that the applicant's case. Even if, the husband of the applicant has got more than ~~10 or 20~~ ² years of service as casual employee, he is not entitled for any pension at all.

7. In the above circumstances, we are of the view that the O.A. is devoid of any merit and is liable to be dismissed. Accordingly, we dismiss the O.A. without any order as to costs.


MEMBER (A)


MEMBER (J)

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