

ORDER DATED 9.3.2010

Heard Shri N.R.Routray on behalf of Shri B.P.Yadav, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel for the Respondent-Railways.

By way of filing Misc.Application No.105/2010, the Respondents have made a prayer to dispense with the personal appearance of the Divisional Railway Manager, East Coast Railways, Khurda Road. By order dated 28.1.2010, we had directed the Divisional Railway Manager, E.Co. Railway, Khurda Road to remain present in the Court on 10.3.2010 to render assistance for effective adjudication of the case. By producing certain records, along with a Memo dated 8.3.2010, Shri Ojha has tried to show that the applicant was really in the Railway Service. From those records we find that the applicant was alone not confirmed/in Pensionable Establishment of the Railways.

Heard. For the reasons recorded in M.A. the personal appearance of the Divisional Railway Manager, East Coast Railway, Khurda Road is dispensed with for the time being.

Call this matter on 17.3.2010.

Send copies of this order to Applicant & Respondents.

ADMINISTRATIVE MEMBER

VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK, CUTTACK

ORIGINAL APPLICATION NO.150 OF 2008

Cuttack this the 06th day of April, 2010

CORAM:

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Smt. Ganapa Papamma, W/o. late Krishnamurthy, aged about 60 years, house  
hold duties resident of Gollakanchili Village, Kanchili, PO-Srikakulam  
District, A.P.

...Applicant

By the Advocate: Mr.B.P.Yadav

-VERSUS-

1. Union of India represented by the General Manager, East Coast Railway, Bhubaneswar, Orissa
2. The Divisional Railway Manager (P), East Coast Railway, D.R.M., Office, Khurda Road Division, PO-Jatni, District-Khurda (Orissa)
3. The Assistant Engineer, East Coast Railway, Berhampur, District-Ganjam (Orissa)

...Respondents  
By the Advocate: Mr.D.K.Behera

ORDER

SHRI C.R.MOHAPATRA,ADMINISTRATIVE MEMBER:

1. This is an Application under Section 19 of the Administrative Tribunals Act, 1985, claiming family pension by the widow of the deceased Railway servant as well as payment of D.C.R.G. and Employees Linked Insurance Scheme benefits etc.
2. The applicant's husband was initially recruited as a casual Gangman in the Engineering Department of the S.E.Railway. According to applicant, her husband was regularized in the post of Gangman in the regular scale of pay of

Rs.196-232/- per month with effect from 24.11.1973. According to applicant, the Respondents deduced provident fund of her husband under the State Railway Provident Fund Act bearing Provident Fund Account No.522680 as non-Contributory, as he was holding pensionable post. The husband of the applicant, while in service died on 11.9.1975. The applicant contends that she is entitled to family pension according to Railway Employees Family Pension Scheme, 1964 as per Railway Board letter No.F(P)62-PN 1/40 dated 2.4.1964. A copy of the relevant circular of the Railway Board has been annexed by the applicant as Annexure-A/6 to the O.A. As her representations were not yielding fruitful result, the applicant had filed O.A.No.1497/2003 before this Tribunal and vide order dated 28.1.2004, this Tribunal had directed the Railway authorities to consider the grievances of the applicant as per Annexure-1 representation to the O.A. Having found no favourable response from the railway authorities, the applicant has knocked at the door of this Tribunal for the 2<sup>nd</sup> time in this Original Application with the following prayer.

“That the applicant therefore prays that this Hon’ble Bench may be pleased to pass an order in favour of the applicant and against the respondents directing the first and second respondent for the settlement and to grant the death cum retirement benefits of the husband of the applicant to the applicant as (i) Family Pension with effect from the date of death of the husband of the applicant (ii) an interest of at a rate of 12% on the amount payable arrear of family pension from the date of death of the applicant’s husband to the date of payment to the applicant. (iii)The death cum retirement gratuity of the deceased Government servant to the applicant and the employees linked insurance Scheme benefits and if any other benefits are pending for payment”.

3. The contention of the Respondents is that they have no document to establish the fact that the casual service of the deceased husband was ever regularized and there is no provision for grant of benefits like, D.C.R.G.,

family pension in such cases. In addition to the above, the Respondents by filing counter have opposed the plea of the applicant to get family pension and other pension related benefits on the ground that the deceased railway servant was not a regular employee and was not coming under the definition of Railway Servant as per Para - 103 of I.R.E.C. and did not have 10 years of minimum qualifying service for being eligible to get pension under Rule 69 of Railway Servant (Pension) Rules, 1993. The Respondents have also opposed the prayer of the applicant on the principle of res judi cata as according to them, this issue was raised by the applicant in the earlier Original Application and the Contempt Petition, which were already adjudicated. The Respondents have pointed out that while working as casual Gangman, the employee expired on 11.9.1975 after rendering of about one year and ten months casual service and he was neither medically examined nor was empanelled for regularization of his temporary service against any permanent post as required under Rule 31 of Railway Servant (Pension) Rules, 1993. They have, however, pointed out that a casual labourer after attaining temporary status is allotted P.F.Number.

4. Heard the learned counsel for both the sides and perused the materials available on record. Both the sides reiterated their stand as given in the pleadings and stuck to their position. The railway authorities have been repeatedly asserting that the employee was casual employee and died prematurely before he was absorbed in regular establishment and hence not eligible to get pension, his wife after the death of the employee cannot claim family pension or other benefits. They have further repeated their stand that after about 30 years no service record is available in the Railways except the permanent records such as P.F. Ledger. Since it was crucial to see the service

records of the deceased railway employee for the proper adjudication of this case, the Railway authorities were directed for the personal appearance of Respondent No.2 on 10.3.2010. However, the available permanent records were filed before this Tribunal by the learned Standing Counsel on 8.3.2010. It reveals from the records that in a letter No. Sett/Engg/583 dated 22.4.1976 from the D.P.O., Khurda Road to Divisional Accounts Officer, Khurda Road, a mention has been made about the P.F. Account of the deceased employee, wherein against Sl.No.XII the employee is shown to be under "Pensionable Establishment" and his date of appointment in service as shown is 24.11.1973 and the date of termination of service due to death is 11.9.1975. This would reveal that the applicant was only not confirmed, though he was in pensionable establishment of the Railways. Railway Board's Circular F(P)63 PNL/40 dated 2.1.1964 provides that the Family Pension Scheme for the Railway Employees, 1964, is applicable to all regular employees on pensionable establishment – temporary or permanent but are not on contributory Provident Fund basis – who are in service on the 1<sup>st</sup> January, 1964 or are recruited thereafter. Further, in the case of death, while in service railway servant should have completed a minimum period of one year of service to be eligible for family pension. It is an acknowledged fact that no casual labourer is ever placed in a pensionable establishment. Since the applicant's husband was already in the pensionable establishment and was only awaiting confirmation and having rendered service for more than one year before the death, this Tribunal has no hesitation to hold that the applicant is entitled to family pension and other pension related benefits consequent to the death of her husband.

5. In the light of the above observation, the Respondents are directed to release the amount due to the applicant towards family pension on the death of her husband as also the other pension related benefits, within a period of three months from the date of receipt of this order.

6. The O.A. is thus allowed. No costs.

  
(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER