

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 493 of 2013
Cuttack, this the 10th day of July, 2015

**CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)**

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Malati Panda,
Aged about 61 years,
Widow of late Baban Panda,
Village- Jamuna Patana, PO- Dulakha Patna,
PS- Korai, Dist.- Jajpur.

.....Applicant

Advocate(s)... M/s. N.R.Routray, Smt. J. Pradhan, T.K.Choudhury, S.K.Mohanty

VERSUS

Union of India represented through

1. The General Manager,
East Coast Railway, Rail Vihar,
Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Personnel Officer (Con.), Coordination,
East Coast Railway, Rail Vihar,
Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Sr. Divisional Financial Manager,
East Coast Railway,
Khurda Road Division,
At/PO- Jatni, Dist-Khurda.
4. Chief Administrative Officer/Con./
East Coast Railway/ Rail Vihar/
Chandrasekharpur/ Bhubaneswar.

..... Respondents

Advocate(s)Mr. M.K.Das, Mr. S.R.Patnaik

.....
O R D E R

A.K.PATNAIK, MEMBER (JUDL.):

The case of the applicant in nut shell is that following the posthumous regularisation of her husband's service in Group D category with effect from 03.10.1989 vide order dated 22.04.1999/01.08.1999, family pension was sanctioned in her favour with effect from the date of death of her husband i.e.

03.10.1989 vide order dated 01.08.1999. While the matter stood thus, the applicant was called upon vide order dated 04.06.2007 as to why the PPO issued in her favour shall not be cancelled as her husband had never been screened for regularisation in a PCR post. By filing reply dated 18.06.2007, she had stated that such cancellation will be against the order issued in similar matter by the Ernakulam Bench of the Tribunal in OA No. 170 of 2011 which was confirmed by the Hon'ble Supreme Court of India in SLP No. 8279 of 2005 by stating that it is completely false to state that her husband was never screened for determination of his suitability for regular absorption in a PCR post. However, vide order dated 01.06.2000, the family pension granted to the applicant was cancelled which she challenged in the first round of litigation (OA No.212 of 2007). The said OA was allowed by this Tribunal on 12.11.2008 with the following observation and direction:

“ 5. It is specific contention of the applicant that under the Railway Service (Pension) Rule, 1993, the President alone is empowered to withdraw full or part pension or gratuity granted to the retired Railway Employee and none other than the President can exercise such power in absence of express provision in that regard. Her contention is that as the present order of cancellation has been made by an authority other than the President the same is not sustainable. As against the above, the Ld. Counsel appearing for the Respondents has stated that the rule relied upon by the Ld. Counsel for applicant is not applicable to the casual employee and as such, cancellation of family pension order is in no way illegal. Further he has argued that widow of a retired employee is entitled to family pension provided the employee is entitled to pension. Since the husband of the applicant was not entitled and the order regularizing the husband of the applicant after his death was irregular necessarily, the applicant is not entitled to family pension and as such, the same was rightly cancelled. None of the parties produced the decision of the Ernakulam Bench confirmed by the Hon'ble Apex Court and, therefore, there is no occasion



for us to go through the same to find out as to whether the present case is covered by the said decision.

6. Neither in the pleadings nor during hearing any document has been produced before us showing cancellation of the order of regularization of the husband of the applicant made with the approval of the Chief Engineer (Construction/HQ/SERailway/Bhubaneswar with specific mentioning that the husband of the applicant passed the requisite medical examination (in BEE One category) in 1989. Applicant was granted family pension pursuant to the order of posthumous regularization of the husband of the applicant and as long as it stands the applicant cannot be denied the benefits of family pension granted to her. In view of the above, the cancellation of the family pension granted to her under Annexure-A/7 dated 28.06.2007 is certainly not sustainable and the same is hereby quashed giving liberty to the Respondents to first consider the sustainability of the order of regularization after giving full opportunity to the applicant and keeping in mind that the employee is no more alive and thereafter, pass appropriate orders in accordance with Rules. Till then the applicant is entitled to get the benefit what she was getting prior to the impugned order under Annexure-A/7 dated 28.06.2007.”

Thereafter, the applicant filed another OA No. 341 of 2011 which was disposed of on 24th April, 2013. In compliance of the aforesaid order, the Respondents considered the representation of the applicant and issued order dated 17.06.2013 which reads as under:

“Your husband, late Baban Panda was initially engaged as Casual Kalasi w.e.f. 05.12.1972 in railways and granted Ty. Status on 01.01.1981. He worked as such till his death on 03.10.1989. He was regularized posthumously against 40% PCR post in Group-D category s Khalasi w.e.f. 07.12.1975 vide CE (Con)/HQ/BBS’s letter No. CE/Con/BBS/PCR/1.4.73/99/02346 dated 22.04.1999 and subsequently, the date of regularization was changed to 03.10.1989 instead of 07.12.1975 vide corrigendum letter No. CE/Con/HQ/BBS/PCR/1.4.73/89 dated 01.08.1999. Hence you were sanctioned Family Pension vide Sr. DFM/KUR’s PPO No. 0702000452000 dated 01.06.2000.



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While the matter stood thus, during a vigilance investigation it was found that the above order of regularization in favour of Late Baban Panda was issued irregularly as he had never been screened for the purpose of judging his suitability not empanelled for regular absorption in PCR post which is mandatory as per Para 2006 of IREM Vol. II (Revised Edition) and he was not on the roll of railway at the time of screening of Casual Labor for absorption which was conducted in the year 1992.

The Para 2006 of IREM Vol. II, chapter -XX (Revised Edition 1990), absorption of Casual Labor in regular vacancies speaks as follows:

“Absorption of casual labour in regular Group-D employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.”

Further, in terms of Chapter-I Para-23 of Railway Service Pension Rules 1993 clarifies that railway servant means a person who is member of a railway service or holds a post under the administrative control of the Railway Board..... but does not include casual labour..... Your husband died while working as a casual labour.

Accordingly, the order of cancellation of regularization in favour of your husband as well as family pension in your favour w.e.f. 26.02.2009 by the competent authority was in order and as per the extant rules. Further, as your case is not similar to that of Smt. Sarojini as decided by the Hon’ble CAT/Ernakulam Bench in O.A.No. 170/2001, benefits in the ratio of the said order can not be bestowed on you as the order was specific for Smt. Sarojini.

In view of the above, your request for grant of family pension is regretted. This disposes of your representation dated: 06.05.2013.”

Hence by filing this successive third round of litigation, the applicant who is the widow of late Baban Panda has challenged the order of cancellation dated 26.02.2009 and the order of rejection dated 17.06.2013 with a prayer to



quash the same and to direct the Respondents to restore the family pension and release the arrears from the date of such restoration.

2. Besides reiterating the stand taken in the order of rejection, it has been stated by the Respondents that the husband of the Applicant (Baban Panda) was regularised posthumously against 40% PCR post of Khalasi under Group D category with effect from 07.12.1975 which was subsequently corrected vide Corrigendum dated 22.04.1999 and 01.08.1999 stating therein that the date of regularisation is to be read as with effect from 03.10.1989 instead of 07.12.1975. The husband of the applicant had never been screened for judging his suitability or empanelment for regular absorption in a PCR Gr. D post which is the basic criteria for regular absorption. He appeared the screening only for C 2 category instead of B 2 category which is a mandatory requirement for absorption/regularisation. It has been stated that the death of the husband of the applicant was 03.10.1989 whereas the screening procedure was completed in 1992 and, as such, question of appearing at the screening test by the husband of the applicant does not arise at all. For the purpose of grant of pension a railway employee should have been regularised in service after successful completion of screening test. Since the husband of the applicant had never been screened question of his posthumous regularisation does not arise at all and as such, the family pension sanctioned in favour of the applicant was rightly cancelled which needs no interference. In so far as applicability of the decision of the Ernakulam Bench of the Tribunal is concerned it has been stated that the case of the applicant is not similar to that of the applicant before the Ernakulam Bench and the said order was specific to the applicant (Smt. Sarojini) only and as such, the present applicant is not entitled to the benefit of the said decision.



3. Mr.N.R.Routray, Learned Counsel appearing for the applicant vehemently denied the stand of the Respondents that the husband of the applicant had never been screened for regularisation and has stated that the husband of the applicant was duly screened by the screening committee and thereafter by the Medical Board. But as he died before the order of regularisation, the applicant submitted representation praying for regularisation of the service of her husband and accordingly his service was regularised with effect from 03.10.1989. In so far as the stand taken by the Respondents that the case of the applicant is not similar to that of M. Sarojini, Applicant before the Ernakulam Bench of the Tribunal is concerned, it has been submitted that the husband of the applicant and M.Sarojini both were working under the Khurda Division. The husband of the applicant died on 30.09.1989 whereas the husband of Sarojini died on 06.01.1989. It is not clear from the order of the Ernakulam Bench as to whether the husband of Sarojini had ever appeared before the Medical Board whereas the husband of the applicant appeared and declared fit by the screening committee as well as by the Medical Board. As such, the stand taken by the Respondents that the case of the applicant is not similar to that of the case of Smt. M.Sarojini is false and afterthought. Lastly, it was stated by Mr.Routray that as the husband of the Applicant is no more, cancellation of the order of regularisation and thereby the PPO issued in favour of the applicant is not sustainable in the eyes of law. Accordingly, Mr. Routray has sincerely prayed for grant of the relief claimed in the OA.

On the other hand, Mr.M.K.Das, Learned panel counsel for the Railway-respondents opposed contentions advanced by Mr. Routray and has stated that as per para 2006 of Indian Railway Establishment Manual Volume No. II, 1990, revised edition, absorption of casual labour in regular group D service is to



be considered in accordance with the instructions issued by the railway board from time to time. Such absorption is however, not automatic but is subject inter alia to availability of vacancies, suitability, eligibility and seniority of individual casual labour. The husband of the Applicant had never been screened for such regularisation and, therefore, based on the report of the Vigilance the PPO issued in favour of the applicant was cancelled.

In so far as the case of Smt. Sarojini is concerned, it has been stated that the Applicant is not entitled to the benefit of the order of the Ernakulam Bench because the said order was challenged by the Respondents before the Hon'ble Kerala High Court and the Hon'ble Kerala High Court did not interfere in the said order as by that time benefit was granted to the Applicant. However, it was observed that if we were sitting as original authority perhaps the claim as presented might not have been sufficient enough for grant of relief as there was even suggestion of foul play in obtaining of the certificates and perhaps it was not also an isolated case. Accordingly, Mr. Das has prayed for dismissal of this OA.

4. Having considered the rival contentions of the parties, I have perused the materials placed on record. I have perused the order of the Ernakulam Bench. Neither before the Ernakulam Bench nor even in the impugned order or anywhere in the pleadings, the Respondents have stated that the husband of the Applicant before the Ernakulam Bench was screened prior to his regularisation rather I find that the Respondents have denied to extend the benefit of the order of the Ernakulam Bench as the said order was specific to the Applicant (Smt. Sarojini) only. Be that as it may since the Respondents have themselves issued order regularising the service of the husband of the applicant and based on which family pension was granted to the applicant and no where in the counter, the respondents



dispute the certificate of the Medical Board (Annexure-A/1) finding the husband of the applicant as fit, I find no justification in cancelling the order of regularisation of the husband of the applicant and thereby the PPO issued in favour of the applicant after she had enjoyed the benefit of family pension. Hence, the order of cancellation is hereby quashed and the Respondents are directed to allow the applicant to avail the family pension as was availing by her prior to the impugned order. Issue order to the above extent within a period of thirty days from the date of receipt of copy of this order.

5. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judl.)

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