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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR**

Original Application No. 29/2006 along with MA No. 17/2006
Date of decision: 19.09.2006

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.

Smt. Veera Wife of late Shri Soumu Khan, aged about 56 years, resident of village and post Pipar Road, Nathu Khan Ki Dhani, District Jodhpur, Rajasthan.

: Applicant.

Rep. By Mr. S.K. Malik & Mr. Daya Ram: Counsel for the applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division.
3. Assistant Personnel Officer, North Western Railway, Jodhpur.

: Respondents.

Rep. by Mr. Manoj Bhandari : Counsel for respondents

ORDER

Per Mr. J K Kaushik, Judicial Member.

Smt. Veera has filed this Original Application for seeking a mandate to the respondents for releasing family pension to her along with other death benefits due to the demise of her husband on dated 21.09.1991.

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission. I have accordingly heard the arguments advanced at the bar on behalf of the contesting parties. I have also perused the pleadings as well as records of this case.



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3. The material facts, considered necessary for resolving the controversy involved in this case, may be succinctly put in, are the applicant is legally wedded wife of one Shri Soumu Khan. Shri Soumu Khan was initially appointed as 'substitute box boy' on dated 05.02.1966 at Merta Road in the pay scale of Rs. 70-85. He fell seriously ill on 31.03.72 and was admitted in hospital wherein he was declared to have suffering from tuberculosis and he remained under constant treatment. He expired on 20.09.1991, in Kamla Nehru Chest Hospital Jodhpur. The applicant apprised the authorities by submitting death certificate and requested for extending all the due benefits. The requisite information was got collected through Welfare Inspector. The matter was reminded number of times and even to Pension Adalat and nothing fruitful was done. An amount of Rs.99/- was only paid to her vide cheque dated 14.12.92. The Original Application has been filed on numerous grounds mentioned in para 5 and its sub paras.



4. The respondents have contested the case and have filed a detailed reply to the Original Application. It has been averred that late Shri Soumu Khan, has not reported for duty after 31.03.72 till the date of his death i.e. 20.09.91, the applicant is not entitled for grant of any pensionary benefits. The Original Application is barred by time. Late Shri Somou Khan was employed as Graded Scale substitute (sic casual labour) Box Boy and as remained unauthorised absence. He was absconding from duty from 31.03.72 to 20.09.91. The respondents were never informed about his sickness. He never approached the Railway Hospital for treatment for 20 years. The applicant is not entitled for grant of family pension because late Shri Soumu Khan was in the graded scale of casual labourer. The husband of the applicant

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was neither a regular employee nor to be considered as expired while in service for the reason that he remained absent unauthorisedly for twenty years. The grounds raised in the application have been generally denied.

5. A separate application has been filed for condonation of the delay in filing the Original Application. It has been averred that the applicant was told that the matter has been referred to the higher authorities and as and when it is materialised she would be informed of the same. Due to paucity of funds she was not in a position to immediately to approach this Tribunal. The subject matter of the O.A relates to grant of pension and other retiral dues which give rise to recurring cause of action and therefore the law of limitation is not attracted. A reply has been filed to the Misc. application on behalf of the respondents and the facts and grounds there of have been refuted.



6. Both the learned counsel for the contesting parties have reiterated the facts and grounds mentioned in the respective pleadings of the parties as noticed above. It was contended on behalf of the applicant that her husband was never issued with any show cause notice or charge sheet even and the question of imposition of any penalty did not arise. He was a temporary status substitute Box Boy and enjoyed graded scale of pay and rendered more that one years service. As per the verdict of Apex court in case of **Prabhavati Devi v. Union of India & others**, (1996) 7 SCC 27, the applicant is fully entitled for the family pension and other due benefits. Per contra the learned counsel for the respondents has submitted that the applicant's

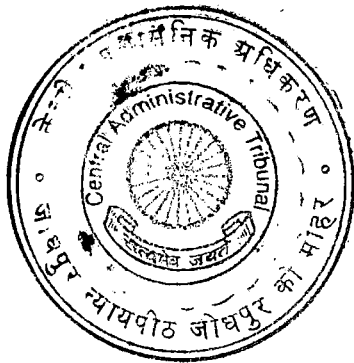
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husband was absconding from service and it was case of abandonment of service, hence no retiral benefits would be payable.

7. I have considered the submissions put forth on behalf of both the parties. As far as the factual aspect of this case is concerned, the deceased government servant was a substitute Box Boy employed in graded scale of pay. He also rendered more than one year of service i.e. about six years of actual service before his death. By operation of law he attained temporary status also on rendering of six (now four) months continuous service in the year 1972 itself. In some places, he has been designated as graded casual labour which is contrary to the records of the respondents e.g. Annex A/5.



8. Before advertng to the crux of the matter, I would deal with the objection of the limitation. At the outset, regarding limitation the Apex Court in **S.K. Mastan Bee v. General Manager, Southern Railways & others**, 2003 (1) SCCLJ 136 held in a matter where there was a delay of about 23 years for staking the claim of family pension, not to be barred by latches. I am of the considered view as per the decision of the Apex Court in S.K. Mastan Bee's case (supra) that in the matter of grant of family pension till it is disbursed to the rightful claimant, it constitutes a recurring cause of action. Therefore, the law of limitation is not attracted and the Misc Application for condonation of delay stands disposed, accordingly.

9. Advertng to the merits of this case, admittedly, no disciplinary action has been taken against him. No notice of abandonment from service was also issued. The plea seems to have been taken only in

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the reply without any supportive documents. Rule 2112 R-II provides that in case one remains wilful absence, it is treated as misbehaviour and the railway servant to be dealt with under D & A Rules. But no action as such was taken and therefore the deceased government servant was in service till his death and the contrary plea of the respondents cannot be accepted. I find that the issued involved in this case is covered on all fours by the ratio of the Apex Court judgement in case of **Prabhavati Devi** (supra) cited and relied upon on behalf of the applicant. I also find the same is also illustrative and it is considered to reproduce extracts of certain portions as under:

"The appellant herein is the widow of Late Bipin Kumar Rai who was a temporary Railway servant in this manner: He, initially, was taken in the Railway Establishment as a casual worker; and w.e.f. 27.4.83 he acquired the status of a 'substitute'. According to the definition given in Rule 2315 of the terms and conditions applicable to 'substitute' in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

The deceased kept working as a 'substitute' till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311; whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the C A T, Patna Bench, Patna, was dismissed which has culminated into this appeal.

On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support *L. Robert D'Souza Vs. Ex. Engineer, Southern Railway and Anr.* (1982 1 SCC 645 and *U.O.I. and Ors Vs. Basant Lal and Ors.* (JT 1992 (2) SC 459). We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal; overlooking as it does the chain in consequence, making the deceased acquires a temporary status and on



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his demises his widow and children acquiring the right to claim family pension.

We, thus, allow this appeal; set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment."

10. In view of the aforesaid analysis and the legal position crystallised by the Apex Court, I find ample force in this OA and the same stands allowed, accordingly. The respondents are hereby directed to grant family pension and other retiral dues in respect of deceased government servant forthwith and in any case not later than three months from today. In case this order is not so implemented interest @ of 8% p.a. shall become payable on expiry said period of three months. Costs made easy.



jsv

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER