

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.919 of 1997

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Smt. Chittamma W/o Late Appa Rao,
Ex-Gangman under Permanent Way
Inspector, South Eastern Railway,
Santragachi, R/o Railway Quarters
No.1/H-9, Unit-8, Old Settlement,
Kharagpur, P.O. Kharagpur, P.S.
Kharagpur Town, Dist. Midnapore

... Applicant

VS

1. Union of India, represented by and
service through the General Manager,
South Eastern Railway, 11 Garden Reach
Road, P.O. Garden Reach, P.S. South Port
Dist. 24 Parganas (W.B.)

2. The General Manager, South Eastern
Railway, 11 Garden Reach Road, P.O.
Garden Reach, P.S. South Port,
Dist. 24 Parganas (W.B.)

3. The Divisional Railway Manager,
South Eastern Railway, Kharagpur,
P.O. Kharagpur, Dist. Midnapore

4. The Divisional Personnel Officer(1)
South Eastern Railway, Kharagpur
P.O. Kharagpur, Dist. Midnapore

... Respondents

For the Applicant(s): Mr. P. K. Ghosh, counsel

For the Respondents : none

Heard on 23.7.1999

: : Date of order: 23.7.1999

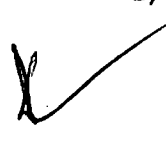
O R D E R

One, Smt. Chittamma who is a widow wife of late Appa Rao, Ex-Gangman under Permanent Way Inspector, South Eastern Railway, Santragachi filed this application for a direction upon the respondents to grant her family pension on account of death of her husband who died after being regularised in the Department. According to the applicant, her husband entered into service on 27.2.1967 as a casual labour. Thereafter he acquired temporary status and he died on 12.9.1983. While the applicant's husband was in service before the death, he was regularised in service, but when the applicant raised the claim of family

pension by making representation, the respondents had come with a plea that the applicant's husband has not been regularised. Thereby she is not entitled to get family pension. Feeling aggrieved by and dissatisfied with the omission and inaction on the part of the respondents in the matter of granting family pension to her on account of death of her husband, she approached this Tribunal by filing this application. The application has been filed on 12.8.1997 and thereafter it has been admitted for hearing. The respondents filed a reply to the OA on 17.4.1999. But today none appears on behalf of the respondents. One departmental staff named Shri Saroj Kumar Prakanik, Sr. Clerk appears with records and he produced the order of cancellation of the regularisation order of the applicant's husband passed on 1.2.91 (Annexure/R3) by the Assistant Engineer, S.E. Railway, Santragachi.


2. The case of the respondents, in short, is that the applicant's husband was wrongly regularised on out of turn basis and subsequently the regularisation of the applicant's husband was cancelled by an order dated 1.2.1991 after his death. Thereby the applicant is not entitled to get family pension since the regularisation of her husband's service has been cancelled by a letter dated 1.2.1991, Annexure/R3 to the reply. The stand taken by the respondents is that the applicant's husband was not regularised at the time of his death and even no junior to the applicant's husband was regularised due to non-availability of the vacancy during his life time. Since no junior to the applicant's husband was regularised; thereby the question of out of turn regularisation did not arise. So, the application is devoid of merit and is liable to be dismissed.

3. Mr. Ghosh, learned advocate appearing on behalf of the applicant has drawn my attention to the letter of cancellation dated 1.2.1991, Annexure/R3 to the reply and letters dated 5/8.5.1997 and 20.5.1997, Annexure/A13 and Annexure/A14 to the



application, respectively and submits that regularisation of the applicant's husband has been cancelled by the Department after the death of her husband and after lapse of 8 years from the date of order of regularisation and no opportunity of being heard was given to his wife before cancellation of the order of regularisation vide letter dated 1.2.1991 and thereby denial of family pension on the basis of the order of cancellation issued by the Department on 1.2.1991, Annexure/R3 to the reply is not sustainable and the applicant is entitled to get the benefit of family pension on the basis of the regularisation, which has been done earlier in accordance with the rules. It is also stated by the learned advocate for the applicant that the respondents did not ~~show~~ in the order of cancellation that regularisation has been cancelled for want of vacancy.

4. I have heard the submission of the learned advocate for the applicant and perused records produced by the departmental staff. I find that the applicant's husband was regularised in the service vide letter No.SRC/E/4/83/1350 dated 20.10.83, i.e., before his death. Thereafter, after 8 years that order dated 20.10.83 has been cancelled vide letter dated 1.2.91 (Annexure/R3) in violation of principle of natural justice. It is a case of family pension and it is found that the Department did not appoint any lawyer in place of Mrs.Roy who has filed the reply to the OA. But Mrs. Ray has now retired from the case. Mr. Saroj K. Pramanik, Sr. Clerk of the Department appears with file which contains the order of cancellation dated 1.2.1991 marked as Annexure/R3 to the reply. From the records it is found that the service of the applicant's husband as casual labour was regularised on 1.3.1983 on out of turn basis by a letter dated 20.3.1983. It is found that when the applicant raised the claim of family pension and other retiral benefits on account of death of her husband, the respondents woke up from sleep and passed the




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order of cancellation on 1.2.1991 after about 8 years from the date of regularisation. The order of cancellation runs as follows :

"In terms of D.P.O./KGP's letter No.E/Sett/Eng/Pen/83/AR dated 29.10.91 office order made under this Office No.SRC/E/4/83/1350 dated 20.10.83 is hereby cancelled as the services of Lt Appa Rao S/o Kondaiya, Ex Gangman cannot be regularised on out of turn basis."

On a perusal of the said order dated 1.2.1991 (Annexure/R3) it is found that no notice of showcause whatsoever has been issued to the applicant or to her husband before cancellation of the order dated 20.10.83 by an order dated 1.2.1991. There is no doubt in this case that in pursuance of the order of regularisation of service of the applicant's husband vide order dated 20.10.1983, she acquired certain rights to get family pension and that has been denied to her by the order dated 1.2.1991 (Annexure/R3) without affording her any opportunity of being heard. It is also settled law that no order detrimental to the interest of the citizen, if ^{it} accrued by order, should not be passed by the authority without affording him/her any reasonable opportunity to state his/her case. In the instant case I find that the respondents blatantly flouted the settled principle of law of natural justice by not giving her any opportunity to state her case when it is within the knowledge of the respondents that the applicant's husband, Appa Rao died in the year of 1983 and so, the order cancelled after 8 years from the date of regularisation is not sustainable and it was issued in violation of principle of natural justice.

5. Accordingly, I set aside the order of cancellation of the regularisation dated 1.2.1991, Annexure/R3 to the reply. Having regard to the facts and circumstances of the case, I am of the view that the applicant is entitled to get family pension and other benefits as admissible to her on account of death of her husband. Accordingly, I direct the respondents to grant the



benefit of family pension and other retiral benefits within three months from the date of communication of this order. If the family pension is not granted within the period fixed, the applicant would be entitled to get interest at the rate of 15% per annum on the amount from the date of death till the payment is made. With this observation the application is disposed of awarding no cost.

[Handwritten signature]
(D. Purkayastha)

MEMBER (J)