

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A. 404/97

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

Hon'ble Mr. G.S.Maingi, Administrative Member

Smt. Anwara Bibi, wife of Late Sk. Golam Ali,
Village - Salar, Post Office - Salar,
District : Murshidabad. West Bengal.PIN-242401.

... Applicant

-Versus-

1. Union of India, service through the Secretary, Ministry of Telecommunication, New Delhi: 110001.
2. Chief General Manager, Calcutta Telephones, Telephone Bhavan, 34, B.B.D. Bag Road, Calcutta - 700 001.
3. The General Manager(North) Calcutta Telephones, P-10, New C.I.T. Road, Calcutta - 700 073.
4. Chairman, Tiretti Bazar Canteen, Tiretti Bazar Telephone Exchange, Departmental Staff Canteen 'A' Type, Telephone Kendra, P-10, New C.I.T. Road, Calcutta - 700 073.
5. The Secretary, Departmental Staff Canteen, Tiretti Bazar, Telephone Exchange Building, P-10, New C.I.T. Road, Calcutta - 700 073.

... Respondents

For the applicant (s) : Mr. B. Chatterjee, counsel

For the respondents : Ms. K. Banerjee, counsel

Heard on : 17.5.2000

Order on : 05.6.2000

ORDER

G.S.Maingi, A.M. :-

This application has been filed by the applicant, wife of the deceased head cook of a Canteen of Telecommunication Department in Calcutta wherein she has challenged the non-payment of arrear death gratuity due to her consequent upon the death of her husband Sk. Golam Ali and also non sanction of widow pension due to her on the death of her husband. The brief facts of this case

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are that the applicant's deceased husband was working as a Cook in the non-statutory Departmental Canteen located at Telephone Kendra, Tiretti Bazar, New CIT Road, Calcutta - 700 073 and according to the respondents he was appointed by the Managing Committee of the said Canteen on 1.12.78 as Asstt. Cook and he expired on 20.2.88. The non-statutory Canteen appointed one of his sons viz. Rajesh Ali as a Casual Worker on 1.5.88 on a salary of Rs.600/- per month with one meal per day from the Canteen. It is stated in Para 3 of the reply to the application. There is another contradictory statement made by the respondents in the reply in Paragraph 13 of the reply wherein they have stayed that Chief General Manager, Calcutta Telephones had approved appointment of Md. Rajesh Ali, one of the sons of the deceased Canteen Employee as Canteen employee in April, 1990.

2. The contention of the applicant in her application is that since she is a widow of the deceased head cook of the Canteen she is entitled for family pension and other benefits. The relief sought by the applicant in her application is that she should be sanctioned widow pension in her favour with all arrears thereof since 21.2.1988 and also the balance death gratuity of Rs.1296/-.

3. The applicant had also filed a rejoinder on 28.7.98 wherein she has asserted that she should be given widow pension.

4. The application came up for hearing on 17.5.2000 when Mr. B. Chatterjee, 1d. counsel appeared on behalf of the applicant and Ms. K. Banerjee, 1d. counsel appeared on behalf of the respondents. 1d. counsel Mr. B. Chatterjee had relied on the following case laws :-

- (1) AIR 1990 SC 937 in the case of M.M.R. Khan & Ors. -vs- U.O.I.
- (2) AIR 1967 SC 109 in the case of Johuri Sah and Ors -vs- Dwarika Pd. Jhunjhunwalla and Ors.
- (3) AIR 1995 SC 1966 in the case of Parimal Chandra Raha & Ors. -vs. L.I.C. of India.

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(4) AIR 1996 SC 1241 in the case of Employees in relation to the management of Reserve Bank of India Vs. Their Workmen.

(5) SLR 1989(2) in the case of Swapna Mukherjee Vs. U.O.I. decided by C.A.T., Calcutta Bench on 16.9.88.

(6) Thresia Kutty Lonappan and Anr. Vs. U.O.I & Ors.

5. Heard ld. counsel of both the parties. While Mr. B. Chatterjee stated that the lady was entitled for family pension, Ms. K. Banerjee stated that she was not entitled to family pension because her husband rendered only 10 years of service as a cook in a non-statutory canteen of the Telecommunication Department.

6. We have considered the matter very carefully. We have gone through some of the judgements cited by the ld. counsel Mr. B. Chatterjee and in our view those judgements do not pertain to the case of the applicant. For instance, the judgement pronounced in the AIR 1995 S.C. 1966 in the case of Parimal Chandra Raha & Ors. Vs. L.I.C. of India - The Canteen Workers have been treated as employees of the Canteen as those were established by L.I.C. as a condition of service for L.I.C. employees. So, the Canteens of L.I.C. are different from the Canteen of the Department of Telecommunication. The applicant has also relied upon the judgement of the Hon'ble Supreme Court in the case of Employees in relation to the management of Reserve Bank of India Vs. Their Workmen reported in AIR 1996 SC 1241. The Hon'ble Court has observed that 95% of expenditure was given by the Reserve Bank of India as subsidy. Canteen was being run by a Co-operative Society and, therefore, could be treated as "being run by the R.B.I". The Applicant has relied upon the famous judgement of the Hon'ble Supreme Court in the case of M.M.R. Khan & Ors. Vs. Union of India. This judgement relates to the Canteens run in the Railway Establishment and have been categorised as Statutory Canteens run

as recognised canteens and it is from 1991. Some of the Canteens have been treated as being run by the Railway Administration and there is no commonness between those Canteens and the Canteens which have been run by the Telecommunication Department. The applicant has also relied upon the case of Thresia Kutty Lonappan and Anr. Vs. Union of India & Ors. reported in 1996, 34 Administrative Tribunal's case 584. This order has been passed by the Ernakulam Bench of Central Administrative Tribunal and it is also the Railway Canteen which cannot be treated as similiar to those Canteens of the Telecommunication Department. However, it is interesting to know that Paragraph 3 of this Judgement has been lifted by the applicant and incorporated in Paragraph 6 of the Rejoinder which states that * a distinction exists between the concept of pension and family pension. That pension signifies deferred wages and is earned in lieu of services put in by the employees, but family pension signifies a compassionate ground, not related to service rendered, not quid pro quo for service, but related to the event of the demise of the employee*. The applicant has not explained the meanings of this extraction of the order of Hon'ble Ernakulam Bench of Central Administrative Tribunal though there is no meaning of lifting the Paragraph 3 of the aforesaid judgement. She cannot derive any benefit from this observation.

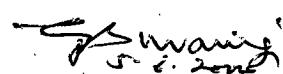
7. The respondents in the reply in Paragraph 5 have stated that the deceased husband of the applicant was not an employee of the Department of Telecommunication and was not holding any civil post under the Government of India at the point of time and as such, is not eligible to approach the Hon'ble Tribunal. The respondents have further stated that Late Golam Ali was a cook of the departmental Canteen run by the management committee as independent body as per the prevailing rules at the point of time and the employees of the Canteen were not treated as Central Government employee. This is not possible to accept. It means that the reply of the respondents is misleading. The very first Annexure i.e. Annexure 'A' of the application at Page 12 is the Appointment Letter of Md. Golam Ali and two others issued by the Asstt. Engineer (J/P), Calcutta

Telephones & Chairman, TBZ Deptl. Canteen and there is no indication that the Canteen was run by any Committee. The Canteen is proposed to be maintained under Sec. 46 of the Factories Act as it covers more than 250 employees and it has been stated in Para 3 of the reply by the respondents that the financing arrangement of the non-statutory Canteens was that the Central Government bore in the normal course 70% of the salary bills of the employees of the non-statutory Canteens and the balance 30% was met by the canteens themselves from their own resources. They further explained that the position was changed from 11.10.1991 when the employees of the non-statutory Canteens were to be treated as Central Government servants following the directive of the Hon'ble Supreme Court in a judgement. They have further stated that the employees of the non-statutory Departmental Canteens were made regular with effect from 11.10.1991. But the respondents have, however, not enclosed the copies of any orders to this effect in their reply.

8. We have considered the matter very carefully. The issue ~~of~~ arises for consideration is that a worker of a Canteen who had not even completed 10 years of service at the time of his death in 1988 and who had not been given any regular status would be eligible for any pensionary benefit such as pension, gratuity etc. We are of the view that the deceased employee was not entitled to get any pensionary benefit since ~~at the time of his~~ death he had neither any temporary status nor he was regularised as an employee of the Department of Telecommunication and had not completed the minimum service for getting any pensionary benefits and as such the widow of the deceased employee is not entitled to any family pension as claimed by her in this application. It may also be pointed out that the applicant did not disclose that her son was already working in the same Canteen on a monthly Salary of Rs.600/- and he had been given further appointment by the Chief General Manager, Calcutta Telephone. It was the responsibility of the ~~ld.~~ counsel of the ~~ld.~~ applicant to advise her properly which does not appear to have happened.

9. We have considered the submissions of ~~ld.~~ counsels of both

the parties very carefully and we are satisfied that the applicant has not been able to produce any Rules, Instructions or Directions according to which she would be given any benefit of family pension being a widow of a deceased worker who neither enjoyed any temporary status nor was regularised for obtaining any pensionary benefits before his death. This being the position, we find no merit in the application of the applicant and, therefore, dismiss the same without awarding any costs.



G.S. MAINI
MEMBER (A)



D. PURKAYASTHA
MEMBER (J)

a.m.