

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 43 OF 2009

Thursday, this the 12th day of November, 2009.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

B. Radhamani Amma,
(W/o. Late B. Thulasidharan Pillai,
Ex-Mopla Khalasi, (Office of the Deputy
Chief Engineer/Gauge Conversion/Hubli -
presently in South Western Railway),
Residing at : "JITHI BHAVAN", Perumon P.O.,
Perinad, Quilon District,
Kerala State, Pin : 691 601.

... Applicant

(By Advocate Mr. T.C.G. Swamy)

versus

1. Union of India, represented by
the General Manager, South Central
Railway, Headquarters Office,
SECUNDERABAD.
2. The Chief Administrative Officer/
Construction, South Central Railway,
Headquarters Office,
SECUNDERABAD.
3. The Deputy Chief Engineer/Gauge
Conversion/Construction,
Presently South Western Railway,
Hubli.
4. The Divisional Railway Manager,
South Western Railway,
Hubli Division, Hubli,
Dharwar District, Karnataka.
5. The General Manager,
South Western Railway,
Hubli, Dharwar District,
Karnataka.

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

 The application having been heard on 12.11.2009, the Tribunal on
the same day delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is the widow of late B. Thulasidharan Pillai, Ex-Mopla Khalasi, who joined the Railways as a casual labourer in 1979, treated as temporary w.e.f. 01-01-1983 in the scale of pay of Rs.260 – 400 and was thereafter promoted in the scale of Rs.330 – 480 w.e.f. 19-01-1984. In the wake of the notification of the revised pay rules effective from 01-01-1986, his scale of pay was Rs.1200 – 1800 and with the promulgation of 1996 Pay Rules, his pay scale was Rs.4000 – 6000. He was transferred from time to time to various places and finally he was working under the Deputy Chief Engineer/Gauge Conversion/Construction/Hubli in the then South Central Railway, when he died on 24-10-1998.

2. On the demise of the said Thulasidharan Pillai, the applicant, requested for family pension and compassionate appointment for her son. Necessary pension papers were, no doubt, collected from her but so far no pension had been granted. Compassionate appointment, however, had been granted to her son as a substitute Gangman, and the said son is at present working as a clerk.

3. The Railway Board had vide Annexure A-2 to A-5 issued orders for regularization of the temporary status casual labourers. In pursuance of the same, eligible casual labourers were provided lien on different divisions of South Central Railway including Hubli Division, with reference to the number of days put in by them during 1997, except those where there are certain discrepancies regarding date of birth, no. of days and those who have been

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representing for absorption in skill grades. Annexure A-9 to A-11 are some such orders of regularization. While majority of the casual labourers were thus regularized, according to the respondents the applicant's husband was not so regularized. For the left over C.L. for whom lien was not provided earlier, lien was provided either in the skilled grade or in the unskilled grade with prospective effect during 2001 after verifying the records of their engagement and service particulars.

4. Applicant made repeated representations over the sanction of family pension vide Annexure A-6, A-7 and A-8 but without any favourable response from the respondents. Hence, this O.A. seeking a direction to the respondents to sanction her the family pension.

5. Respondents have contested the O.A. According to them, the applicant's husband having not been regularized, no family pension is admissible to the applicant. However, service gratuity was paid to the widow as the applicant has served for less than 10 years.

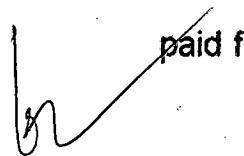
6. Applicant filed his rejoinder stating that the applicant and her son have been given the very same treatment which would otherwise be extended to regular employees' wards. If the applicant's son could be given compassionate appointment, which is done only in the case of wards of deceased regular employees, if service gratuity could be paid to the widow, which could be sanctioned only when the services of the individual were regularized, contending that the applicant's husband was not regularized and therefore, his wife is not entitled to family pension is illegal.

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7. Counsel for the respondent submitted that as the applicant's husband was not regularized, only service gratuity was granted and no family pension is admissible to her.

8. Arguments were heard and documents perused. That the applicant's son had been considered and granted compassionate appointment is undisputed. Similar is the fact that the applicant had been provided with service gratuity. The extant rules provide for compassionate appointment or for payment of terminal gratuity for a regular or temporary railway employee (in contra distinction to temporary status railway employee). As such, for the purpose of grant of compassionate appointment or for that matter, for payment of terminal gratuity (death gratuity) if the services of the applicant's husband were held to be regular, there is no reason as to why, for the purpose of family pension the services have not been treated as regular. It is trite that in the absence of a differentiating feature, what is sauce for a goose is also sauce for the gander. Again, as per the Railway Board Circular, all the casual labourers were to be regularized. For the lapse on the part of the respondents in respect of regularization on time of the services of the spouse of the applicant, the applicant cannot be penalised.

9. In view of the above, the O.A. is allowed. It is declared that the applicant is entitled to grant of family pension as per the extant rules. The extent of arrears of pension shall be restricted to the extent that family pension from 01-01-2006 (three years anterior to the date of filing of the OA, i.e. January 2009). Claim for interest on arrears is rejected. The applicant shall be paid future pension as well.



10. Issue of necessary PPO and advice to the Bank shall be completed within three months from the date of communication of this order. Payment of arrears shall be ensured by the respondents within four months from the date of communication of this order. Payment on time of monthly family pension shall also be ensured by the respondents. No cost.

(Dated, the 12th November, 2009.)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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