

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 125 of 2000

Tuesday, this the 28th day of November, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. Smt. M. Lakshmi,
W/o. M.R. Arumugham,
Retiring Room Attendant,
Southern Railway, Coimbatore Junction,
Residing at: 'Jyothi Nagar',
Door No.28, P.N. Palayam,
Coimbatore-37 ...Applicant

[By Advocate Mr. T.C. Govindaswamy (rep.)]

Versus

1. Union of India, represented by
the General Manager,
Southern Railway, Head Quarters Office,
Park Town PO, Madras-3
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town PO, Madras-3
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat. ...Respondents

[By Advocate Mr. K. Karthikeya Panicker (rep.)]

The application having been heard on 28th of November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1, to declare that she is entitled to the grant of family pension consequent on the demise of her husband MR Arumugham, and to direct the respondents to grant her the same with arrears.

2. The applicant is the widow of MR Arumugham who died on 10-5-1977 while in service of the Railways as a Box Boy. Since no family pension was granted to her, she submitted several representations to the authorities concerned and after a long

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lapse A1, the impugned order, denying family pension was issued. While her husband was working as temporary status attained Khalasi, his services were terminated. Aggrieved by the same, her husband along with certain others approached the High Court of Kerala by filing OP.No. 945/70. That OP was decided in favour of the petitioners declaring that the termination was not valid. Her husband was taken back to service as a substitute Khalasi as per A2 dated 17-8-1972.

3. Respondents say that applicant's husband was reengaged as a Substitute Khalasi from 22-8-1972 as per directions of the High Court of Kerala in OP.No. 945/70. He was not screened and absorbed against a regular post. He expired while working as Substitute Khalasi on 10-5-1977 before absorption against a regular post. Substitutes with or without temporary status, if not screened and absorbed against a regular post, are not entitled to pensionary benefits. The Original Application is barred by limitation.

4. It is an undisputed fact that the applicant's husband worked as a Substitute Khalasi from 22-8-1972 till his death on 10-5-1977. According to the applicant, she is entitled to family pension. Respondents say that only those substitutes who have been screened and absorbed against a regular post only are entitled to family pension.

5. Reliance is placed by the respondents heavily in the ruling in Union of India and Others Vs. Rabia Bikaner etc. [AIR 1997 SC 2843]. In the said ruling, it is clearly stated that:

"In view of the above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the

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temporary post, died while in service, his widow would be eligible to pension under the Family Pension Scheme, 1964."

6. The said ruling heavily relied on by the respondents really comes in favour of the applicant for the reason that there is no dispute as to the fact that the applicant's husband was working in a temporary post as substitute and he had put in more than one year of service at the time of his death.

7. In Prabhavati Devi Vs. Union of India and Others [AIR 1996 SC 752] it has been held that a casual worker acquiring status of substitute and completing more than one year's continuous service before his death, acquires the rights and privileges of a temporary servant and his dependants are eligible for family pension under Para 801 of the Manual of Railway Pension Rules.

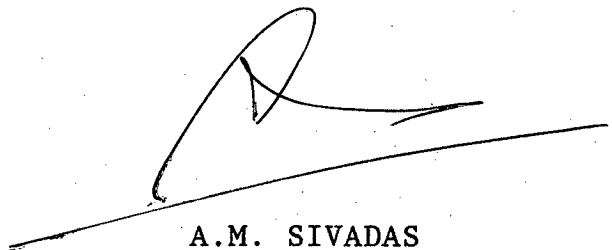
8. Following Prabhavati Devi's case, this Bench of the Tribunal in M.G. Remani Bai Vs. Union of India and Others [(1997) 36 ATC 603] has held that the applicant therein is entitled to the benefit of family pension as provided under para 801 of the Manual of Railway Pension Rules, 1950, in an identical matter.

9. Respondents have raised a question of limitation. It is not possible to accept the plea of limitation for the reason that the relief sought is for family pension and as far as the family pension is concerned, the applicant has got a recurring cause of action.

10. A1, the impugned order, says that applicant's husband was not a permanent/temporary Railway employee and as such, the family pension cannot be granted. In the light of what is stated above, A1 cannot be upheld and is to be quashed.

11. Accordingly, the Original Application is allowed quashing A1 and declaring that the applicant is entitled to the grant of family pension as provided under para 801 of the Manual of Railway Pension Rules, 1950. Respondents are directed to pay the entitled family pension to the applicant commencing from three years immediately preceding the presentation of this Original Application. This shall be done by the respondents within three months from the date of receipt of a copy of this order. No costs.

Tuesday, this the 28th day of November, 2000



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

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| 1. | A1 | True copy of the letter bearing No. J/P 500/PA/99/20 dated 30-11-99 issued by the 3rd respondent. |
| 2. | A2 | True copy of the order bearing No. J/P 407/V/TS/SRR dated 17-8-72 issued by the 3rd respondent. |