

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.NO.: 463 of 1996.

DATE OF DECISION : 2-JUNE-99.

Most. Rita Devi, Widow of Late Prahlad Prasad Keshri, Ex-L.D.C. at Directorate of Census Operations, Bihar, Boring Canal Road, Patna, resident of mohalla Dadar Mandi, Police Station Alamganj, Post Office Gulzarbagh, District Patna.APPLICANT.

By Advocate :- Shri Pradeep Kumar.

Vrs.

1. Union of India through Secretary, Ministry of Home Affairs, Cabinet Secretariat, New Delhi..
2. The Registrar General, India, Kotah House, Annex-2/A, Mansingh Road, New Delhi-110 011.
3. The Pay & Accounts Officer, Pay & Accounts Office [Census], Ministry of Home Affairs, 4th Floor 'D' Wing, A.G.C.W. and M Building New Delhi.
4. The Accounts Officer, Central Pension Accounting Office, 274, Shaheed Captain Gatt Marg, Shriniwaspuri, New Delhi-65.
5. The Accounts Officer, O/o the Registrar General, India, 2/A, Mansingh Road, New Delhi-110 011.
6. The Director, Census Operations, Bihar, Boring Canal Road, Patna.
7. The Joint Director, Census Operations, Boring Canal Road, Patna.RESPONDENTS.

By Advocate :- Shri V.M.K.Sinha,
Senior Standing Counsel.

C O R A M

HON'BLE MR. JUSTICE S. NARAYAN, VICE-CHAIRMAN.

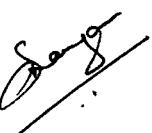
O R D E R

S.NARAYAN, V.C.:- The applicant herein, Rita Devi, is the widow of Late Prahlad Prasad Keshri, who died while in service working as Lower Division Clerk in the Directorate of Census Operation, Bihar. Subsequent to his death the Joint Director, Census Operation, Patna [Respondent no.7], recommended for sanction of Family Pension and Death Gratuity to the Pay & Accounts Officer, Ministry of Home Affairs, New Delhi

[Respondent no.3] in favour of the applicant [Rita Devi] vide Annexure-5, and, thereupon, the respondent no.3 [the competent authority] on his turn sanctioned and issued the Pension Payment Order No.229849500333, dated 4/95, granting payment of basic pension of Rs.625/- w.e.f. 6th September, 1994, in favour of the applicant and also for payment of gratuity to the tune of Rs.18,000/- subject to certain deduction of Rs.1,000/- and also recovery of Rs.2500/- from the said amount of gratuity, vide Annexure-5/1.

2. Since the aforesaid Pension Payment Order [Annexure-5/1] was not given an effect to by the concerned respondents 6&7 i.e., by the Director and Joint Director of Census Operation, Patna, there was the necessity for the applicant to come-up with the instant O.A. for reliefs in effect to direct the respondents 6&7 to make the required payment of Family Pension and Death Gratuity with interest and also without deduction of Rs.2,500/-, which has already been recovered from the applicant at the time of payment of provident fund dues of her husband in her favour.

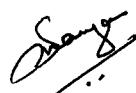
3. In order to refute the claim of the applicant, the respondents filed a written statement with the solitary plea, in sum and substance, that the applicant's husband had, of course, completed more than 13 years of continuous service as Lower Division Clerk, but his term of appointment was purely temporary and adhoc and he was not made regular prior to his death and, accordingly, as per Rule 54[2][a] of the CCS [Pension] Rules, 1972, his widow [i.e. the applicant] was not entitled to Family Pension and, accordingly, the order for payment of family pension was withdrawn



for that very reason, vide paragraph nos. 15 & 16 of the written statement. It may be noted here that no copy of the order of withdrawal of payment against the Pension Payment Order was brought on record on behalf of the respondents. The withdrawal order, as asserted on behalf of the respondents, was not even communicated in writing to her.

4. In order to better appreciate the merit of the case involved, it is needed to push some more facts. Admittedly, the applicant's husband was appointed on adhoc basis, as long back as, on 15th June, 1981, and he remained adhoc Lower Division Clerk till his death on 4th September, 1994. It was, however, very much significant to note that the applicant's husband, along with some others with similarly situated position, had come-up before this Tribunal with O.A. Nos.500/93 & 512/93 for issuance of a direction to the present respondents to regularise their services. Upon hearing of both the O.As., this Tribunal allowed both the O.As. by a common judgment and order, dated 4th April, 1995. The directive portion of the order, as contained in paragraph no.13 thereof is as follows :-

"The condition imposed is that these officials would pass a typewriting test either in Hindi or in English at the prescribed speed of 25/30 words per minute as the case may be. This test is mandatory only in case of those who have not passed this test earlier. Thus, orders regularising the services of the applicants should be issued within a period of three months after complying with the above condition. The date from which the services are to be regularised are also laid down in para-3. As the applicants are similarly situated at



Gulam Nabi it is appropriate that the same conditions should be fulfilled by them also. Thus, the applicants of the present two O.As. succeed on the main ground. The respondents are directed to regularise them as the Registrar General in the letter cited above in the case of Gulam Nabi within a period of three months from the date of receipt of this order. All other instructions or conditions contrary to this or inconsistent with this shall be set aside as inoperative only as far as the applicant in these O.As. are concerned."

5. The respondents herein while challenging the claim of the applicant has sought much reliance to be placed on the direction and the ~~affect~~ of the aforesaid order of this Tribunal and asserted in paragraph no.5 of the written statement, that consequent upon judgment of this Tribunal, in the aforesaid cases, the services of all the remaining applicants, excepting ^{that of} the present applicant's husband, were regularised as Lower Division Clerk w.e.f. 20th July, 1995, i.e. on the date of issue of orders by the office of the Director of Census Operation, Bihar. As regards the applicant's husband, Prahlad Prasad Keshri, it was contended that since he was already dead on 4th September, 1994, and he could not take the examination/test in furtherance of the order, dated 4th April, 1995, of this Tribunal, he was not entitled for regularisation and, consequentially, there did not arise entitlement of Family Pension.

6. True it was that in terms of the order, dated 4th April, 1995, of this Tribunal, in the earlier O.As., the present applicant's husband was supposed to appear in the examination/test for the purpose of

regularisation of the services, but obviously, for the reason of his death he could not appear in the examination and the favour which was made available to the other co-applicants by way of regularisation of services, could not be made available to him. This was for the simple reason of force-major of the event of death which stood in the way of the applicant's husband in regularisation of his service. A question is thus, most definitely posed as to whether this could be a sufficient ground to deny the privilege of regularisation to the applicant's husband and consequentially, further denying family pension and death gratuity to the applicant ? In context of the question raised above, it would be apt to interpret the letters and spirit of the earlier order of this Tribunal passed in the aforesaid O.As. of the year 1995. It goes without saying that the claim of regularisation of the applicants therein, including the present applicant's husband, was upheld on account of completion of continuous service for over 13 years without any adverse remark or step taken against them. There was, of course, a condition imposed while actually giving effect to the order of regularisation and that was by way of a direction to ask those applicants to appear in a test/examination of typewriting in Hindi or in English, as the case may be. ^{that} It may be placed on record while passing such a conditional order either of the parties therein did not draw the attention of this Tribunal by way of amendment petition that one of the applicant therein, namely, Prahlad Prasad Keshri [husband of the present applicant] was dead three months prior to the judgment and order on 4th April, 1995. His death in harness had

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taken place on 4th September, 1994. Obviously, being ignorant of the event of death, the conditional order of regularisation was passed. The condition, as imposed, was in any view of the matter neither binding upon the deceased applicant nor was possible to be implemented on account of the force major of death. What would happen in this situation? The only answer would be that the condition imposed would be deemed to be not applicable to him, and that being as such, the actual order in effect of regularisation alone could be given an effect to on the ground of parity and for the sake of giving same treatment to all those similarly situated, so far as regularisation of service was concerned. In my considered opinion, and also being alive of the hard fact of the death of the applicant's husband it can not but be held that the condition imposed with regard to the test and examination has to be ignored in the case of the applicant's husband. In any view of the matter, the condition imposed was in the nature of directory and not mandatory; and since the directory order was not possible to be executed, I am sure, it should not stand in the way of granting regularisation of service. There was some additional reason as well to give effect to the order of regularisation in favour of the applicant's husband which would be dealt subsequently.

7. There was yet another view of the matter which was available in favour of the applicant. In the instant case it was a hard fact that the applicant's husband rendered continuous service on adhoc basis for a fairly long period of 13 years. There was certainly a condition imposed that a test/examination would be held for typewriting. But, should there be no limit of time



for that examination. I do not think that ^{an} employer
should ^{be} given ~~him~~ a long hand to not hold any such
examination so as to debar an incumbent not to qualify
in the test and claim regularisation. What happened in
the case ^{is} that after a few years of rendering service
the applicant's husband, along with others, were
directed to appear in the examination for the purpose
of regularisation and they all submitted themselves for
the examination on 28th July, 1985, but unfortunately,
the Director of Census Operation, Bihar, cancelled the
examination. Thereafter, there was no step taken to
conduct any such examination until of the late when all
concerned came forward with O.As. 500/95 & 512/95, and
there was a direction for the same by this Tribunal by
an order, dated 4th April, 1995. Here one's attention is
naturally attracted to the observation of the Supreme
Court in the case of State of Haryana Vrs. Pyara Singh,
reported in AIR 1992 [SC] 2130, to the effect that for
any reason the adhoc or temporary employee is continued
for a fairly long spell, the authorities must consider
his case for regularisation provided he is eligible
and qualified according to the rules and his service
record is satisfactory and his appointment does not run
counter to the reservation policy of the State. In the
instant case, nothing adverse has been reported against
the applicant's husband so as not to regularise his
service. Secondly, it was also taken note by this
Tribunal in the earlier order, dated 4th April, 1995,
that some other employees of the Census Department,
like Cartographers, Draftsman, etc., who were similarly
selected employees, as that of Lower Division Clerks,
had been provided with the benefit of regularisation,
but the case of Lower Division Clerks had been

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isolated. It was further taken note of the fact that even the condition of passing the examination in the appointment letters can at best be taken to be directory and not mandatory in view of the ~~law~~ laid down in the Privy Counsel decision in Montreal Street Railways Company's case, reported in AIR 1917 [PC] 142. ^{in the earlier order} This Tribunal held on consideration of these pleas, that there was ~~no~~ considerable force ⁱⁿ the plea of the applicants, but as the counsel on both the sides only focussed on the implementation of the Gulam Nabi's case, there was no need to examine in ~~death~~ ^{detail} the applicability of those points. Therefore, the earlier order, dated 4th April, 1995, of this Tribunal was practically to adopt the mode adopted in Gulam Nabi's case of Jaipur Bench of Central Administrative Tribunal on 5th July, 1993, in T.A.No.2424 of 1986.

8. In view of what has been noticed in the preceding paragraph, one would be compelled to take a decision that the condition as to appear in the test/examination before regularisation was simply a directory order and that, in the event of a force major, like death, it can not be treated as a condition precedent or mandatory for regularisation of service as claimed.

9. For the reasons, aforesaid, the plea raised on behalf of the respondents to refute the claim of the applicants ^{in terms of} the Pension Payment Order [Annexures-5&5/1] falls to the ground. This O.A. is thus, allowed. The Pension Payment Order [Annexure-5/1] would be deemed to be in force and that has to be given effect to in the letters and spirit, as contained therein, by the respondents within two months from the



date hereof. As to the quantum of interest, it is directed that a sum equivalent to 12% per annum would be payable on the amount of death gratuity. It may, however, be made clear that this order has been passed in the given peculiar facts and circumstances of the case and this shall not be treated as a precedent.

There shall be, however, no order as to costs.

S. Narayan
2/7/99
[S. NARAYAN]
VICE-CHAIRMAN.

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