

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. NO. 576/1996

Patna, this the 26th day of April, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Smt. Kamarun Nissa
Widow of Late Md. Sulaiman,
Vill. & P.O : Sonepur,
Distt: Saran

.... Applicant

(By Advocate : None)

VERSUS

1. Union of India
Through the General Manager,
N.E. Railway, Gorakhpur

2. The Visional Railway Manager,
N.E. Railway, Sonpur, Saran

3. The Assistant Engineer,
N.E. Railway,
Sonepur, Saran

.... Respondents

(By Advocate : Shri Sheejee Prasad)

O R D E R (ORAL)

Heard the learned counsel for the respondents. None is present on behalf of the applicant. On perusal of the order of the Tribunal dated 6.1.2004, it is observed that the learned counsel for the applicant was not present on that date and accordingly, while adjourning the case, a view had been taken that 'if counsel for the applicant will not be present on the next date, matter will be decided on available material'. None was present on behalf of the applicant even on 8.3.2004.

2. On perusal of the OA, it is observed that the applicant has not filed the OA against any specific orders of the respondents. The same has been filed seeking a direction to the respondents to arrange immediate payment of family pension and other settlement dues to the applicant, who is the widow of late Md. Sulaiman,

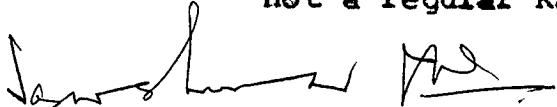
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who was a temporary Khalasi working under IOW/Sonpur and who died in harness on 23.8.1987 in Govt. Civil Hospital, Sonpur. The applicant has submitted that all settlement forms duly filled in were submitted to the respondent No.2 through respondent No.3 (Assistant Engineer, N.E. Railway, Sonpur) in the year 1987 itself, but no payment has been received till date.

3. The applicant has submitted that her husband was initially appointed as a Casual/Substitute Khalasi on daily wages rate on 29.4.1976 and was subsequently allotted PF Account Number vide Ledger Folio No.2020 and he was accordingly, as claimed by her, granted all the rights and privileges as available to a temporary Railway servant. She has also claimed that ~~the~~ her husband was provided necessary medical facilities and railway accommodation and all other privileges like a regular employee including ~~being~~ entitled to Discipline and Appeal Rules. Unfortunately, the husband of the applicant (deceased employee) died at a young age of 38 years on 23.8.1987.

4. Elaborating her plea for family pension, she has submitted that her husband had been medically examined by the DMO/N.E. Railway Sonpur and had been found fit for duty. The applicant's husband was also a screened hand for Group 'D' post, as claimed by the applicant. She has further claimed that she had submitted a number of representations to the respondents in the matter, but she has not received any response from them so far.

5. The respondents, in the written submissions, have maintained that the applicant's husband was not absorbed against any regular temporary post and accordingly he was not a regular Railway servant. The applicant



as such, is not entitled for family pension etc. The respondents have further stated that the family pension scheme for Railway employees, 1964 is applicable only to the regular employees on pensionable establishment. The casual labourers, according to them, are brought on pensionable establishment only after they are absorbed against regular temporary posts. They have further argued that the benefits of family pension scheme for Railway employees, 1964 are admissible to employees who die while in service only if they had completed a minimum period of one year continuous service from the date such employees are absorbed against regular temporary posts. In the present case, the applicant's husband had not been absorbed and, therefore, the question of the benefit of family pension ^{being} ~~is~~ applicable to her does not arise. The respondents have also cited the Hon'ble Supreme Court's decision in the case of Ram Kumar v. Union of India reported in (1988) 2 SCR 138 at 144, in which following view has been taken:-

"It is stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to the temporary railway servants and therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees."

6. However, the applicant, in her rejoinder to the written submission, has brought in some new facts particularly what has been submitted in paragraph 3 thereof in which, among other things, she has submitted that it is not true and correct as stated in paragraph 3 of the written submission that only in case of death after completion of one year regular service the employee is entitled to pension. According to the

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applicant, in the cases of death of Railway employees, such employees are entitled to pension even they have not worked for one year; but having themselves got medically examined before absorption in terms of Railway Board letter No. F(G)iii/85/MN/1/19 dated 19.12.1986. In this connection, the applicant has also referred to the orders as circulated vide Railway Board's letter No.E(N.G)ii-69RE 1/90 dated 16.3.1970 in which it has been directed by the railway board that 'it should be ensured that substitutes are not already empanelled for appointment to regular post in an approved manner are not engaged for a period exceeding three months under any circumstances', the applicant has argued that her husband continued to work continuously for a period of 11 years against permanent post and, therefore, it is evident that he was not a substitute but a regular employee. The applicant has also referred to another letter of the Railway Board as issued vide N.O.E (N.G)ii-69 RE 6/90 dated 18.12.1970 addressed to all the General Managers of the Indian Railways insisting that substitutes should not be continued for more than 3 months. Any incident of substitute working against regular vacancies beyond 2 months must be reported to the Personnel Officer and beyond 4 months to the Head of the Office monthly, who should ensure that special efforts are made to finalise the panel and make regular posting. The applicant has accordingly submitted that in her husband's case no such reports were made to the Personal Officer and H.O.O. and as such she has taken the position that her husband was a regular employee. She has also taken the position, as based on the decisions of the Hon'ble Supreme Court in W.Ps No. 190 and 1978 of 1988 decided on 15.12.1989 in the case of Bhagawati Prasad & Others v. Delhi State Mineral Development Corporation that regularisation of

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daily rated workers having completed 3 years of service cannot be denied. Reliance has also been placed by the applicant in the decision of the Lucknow Bench of the Tribunal in an OA decided on 7.6.1999 in which it has been held that the decision of the Hon'ble Supreme Court in the case of Ram Kumar vs. Union of India reported in 1988 (2) SCR 138 - 144 was not applicable in the said OA, in which the Tribunal also held that a substitute works against a regular sanctioned post and as such a widow of a substitute is eligible for family pension as reported in 2000 (2) SLJ/CAT 25 para 5 in the case of Kamini Srivastava vs. Union of India. This view is also reported to have been taken by the Ernakulam Bench of the Tribunal as reported in 1997 (36) ATC 603 M.G. Remani Bar vs. Union of India & Others. In the rejoinder the applicant has also made a statement that many other cases of family pension were also allowed by the different Benches of this Tribunal as referred to by her on pages 9 - 11 of the rejoinder.

7. It is observed, on perusal of the details of the facts as submitted by the applicant in the OA and more particularly in her rejoinder, which have not been gone through or responded to by the respondents by way of filing an additional affidavit. It is also observed that specific decisions have been cited by the applicant in support of her contention that she is entitled to receive family pension on the basis of 11 years continuous service as rendered by her deceased husband. It is not clear from the written submissions filed by the respondents that the

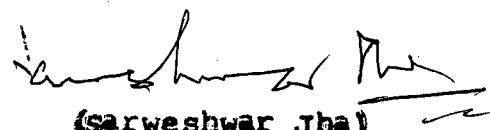
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deceased employee, after having rendered 11 years of service, was not considered for regularisation. It is possible that he was medically examined for absorption, as also submitted by the applicant, but before he could be absorbed he unfortunately died. It does not stand to reason nor to any meaningful explanation as based on the decision of the Hon'ble Supreme Court as referred to by the applicant, as to why the deceased employee, who had rendered 11 years continuous service before he died, was not granted regularisation by the respondents. Answers have to be given by the respondents to other aspects of the matter, particularly to the one relating to the reports being submitted to the concerned Railway Authorities in respect of substitutes working against regular vacancies beyond 2 months and 4 months as referred to by the applicant in the rejoinder. Obviously there are certain loose ends as drawn up by the applicant in the rejoinder which need to be looked into by the respondents before a definite view can be formed in this case. As this matter has been lying undecided for quite some time, it will be necessary that the respondents apply their mind to the various points as raised by the applicant, particularly in the rejoinder.

8. Having regard to the facts and circumstances of the case and the rival contentions of the parties as submitted in the OA, counter affidavit and rejoinder, I am of the considered opinion that the appropriate course would be to remit the case to the respondents (Respondent No. 2) to give a fresh consideration to the case particularly with reference to the points which have been raised by the applicant in the rejoinder and to

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decide the matter in the light of the Railway Board's circulars/letters as also the decisions cited by the applicant in the OA as well as in the rejoinder and to dispose of the matter by issuing a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order. With this, the OA stands disposed of with no order as to costs.


(Sarweshwar Jha)
Member (A)

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