

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 107 OF 2006

[Patna, this

, the 11th Day of April, 2008]C O R A M

HON'BLE SHRI AMIT KUSHARI, MEMBER [ADMN.]

Smt. Indira Devi, widow of Late Ram Subhag Mahto, Ex-Vehicle/Car Driver under D.R.M., E.C. Railway, Samastipur, resident of Chak Diwalat, P.O.: Alha Bisonpur, P.S.: Ujiarpur, District – Samastipur [Bihar]APPLICANT.
By Advocate :- Shri Sudama Pandey.

Shri S.K.Singh.

Vs.

1. The Union of India through General Manager, E. C. Railway, Hajipur [Vaishali].
2. The Divisional Railway Manager, E.C.Railway, Samastipur.
3. The Divisional Account Officer, E.C.Railway, Samastipur.

RESPONDENTS.By Advocate :- Shri N.L.K.Singh, ASC.O R D E R

Amit Kushari, M[A] :-The applicant is a widow of a vehicle driver who died in harness on 18.12.1999. The husband of the applicant was initially appointed as a casual driver but in April, 1982 he was found suitable after appearing in a trade test and he was appointed as a Driver on 24.04.1982 in the pay scale of Rs. 260 – 400/- with effect from 28.08.1982. As per memorandum issued by the Divisional Accounts Officer, Samastipur, bearing no. 7935 dated 29.09.1982, this post of mini-bus Driver was a sanctioned post with pay scale of Rs. 260-400/-. The husband of the applicant thereafter worked for 17 years uninterruptedly in the same pay scale against a sanctioned post and died.

The respondents have argued that the husband of the applicant



was never medically screened and never appointed on a regular permanent post and, therefore, the widow is not entitled to the family pension in the light of Railway Service Pension Rules, 1993. The widow had earlier approached the Patna Bench of Central Administrative Tribunal in OA 293 of 2003 and on 16.04.2003 the Patna Bench of the Tribunal disposed of the OA by directing the respondents to treat the OA as a representation and dispose it of in accordance with law. Thereafter, the respondents issued a speaking order on 18.12.2003 rejecting the claim of the widow. Hence, this OA.

2. Shri Sudama Pandey, learned counsel while arguing on behalf of the applicant pointed out that the applicant had undergone a medical test and a screening test at the time of his regularization as a Driver against a regular sanctioned post and no further medical check-up or screening test was necessary for his regularization against the permanent post. He says that the applicant's husband having worked continuously for 17 years against a sanctioned post had acquired an inalienable right over a sanctioned post. Since he had been conferred temporary status also, his widow is entitled to family pension since it is a settled law now that widows of such categories of employees are entitled to family pension in view of a number of judgments of CAT as well as the Patna High Court and the Apex Court. Shri Pandey quotes from a judgment of the Patna Bench of CAT, delivered on 17.01.2008 in OA No. 508 of 2005 [Bindu Devi Vs. Union of India & Ors.] in which an exactly similar case has been dealt with and the applicant has been allowed family pension. While deciding this case the Patna Bench of CAT has relied upon the judgment of the Apex Court in the case of Prabhawati Devi Vs. Union of India

[1996(7) SCC 26; the judgment of CAT in OA 726 of 2005 [Smt. Sushila Devi Vs. Union of India]; Smt. Santosh Vs. Indian Council of Agricultural Research & Ors. [2004 (3) ATJ; and Rajeshwari Devi Vs. Union of India & Ors. [2006(2) ATJ 307]. The Hon'ble Apex Court has held in the case of Prabhawati Devi that a casual worker working in the Railways acquiring the status of a substitute and after continuing as such for over an year, dying – his widow and children became entitled to family pension.

Shri Sudama Pandey, learned counsel also drew my attention to the judgment of Ahmedabad Bench of CAT, in the case of Smt. Vallam Badia Vs. Union of India & Ors. in which a widow's claim for family pension in an identical circumstance was upheld. The Ahmedabad Bench of CAT in this matter followed the verdict of the Hon'ble Supreme Court by a Three Judges Bench in the case of Ram Kumar Vs. Union of India; [1996 (1) SLJ 116].

3. Shri N.L.K.Singh, learned Addl. Standing Counsel arguing on behalf of the respondents says that a medical screening test is absolutely mandatory in the Railway Rules before a person can be regularised against a sanctioned post. The trade test which the applicant's husband had undergone before appointment is not the same screening test which a person has to undergo before regularization. The applicant's husband died before clearing the screening test and, therefore, he cannot be taken as a regular Railway employee. Since he was not a regular Railway employee, the claim of the widow cannot be upheld.

4. I have carefully weighed the rival arguments. On this subject there are a large number of judgments from the High Courts and also from the



Hon'ble Apex Court. The matter does not need any special discussion since it is now a settled law that widows of persons who have acquired temporary status would be entitled to family pension. Considering that the Patna Bench as well as Ahmedabad Bench of CAT have also taken similar view, I also take an identical view in the matter. The applicant is entitled to family pension and the respondents should grant her the family pension with all the arrears within three months from the date of receipt of this order. If the payment is not made within this period, then thereafter interest @ 8% per annum would be admissible to the applicant.

The O.A. is, accordingly, allowed. No costs.



[Amit Kushari]/M[A]

skj.