

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 521 OF 2005[Patna, this 13/7, the July Day of July, 2009]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

.....
 Smt. Dhano Devi, widow of Late Rupan, Ex-Chowkidar, under Permanent Way Inspector, Eastern Railway, Paharpur, Now E.C.Railway, Paharpur, resident of village Dumari Tapsa, P.O.: Fathehpur, District – Gaya [Bihar].

.....APPLICANT.

By Advocate :- Shri M.P.Dixit.
 Shri S.K.Dixit.

Vs.

1. The Union of India through the General Manager, East Central Railway, Hazipur, PIN – 844 101.
2. Divisional Railway Manager, E.C.Railway, Dhanbad.
3. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.
4. The Senior Divisional Engineer [Co-ordination], East Central Railway, Dhanbad.
5. Senior Divisional Finance Manager, E.C.Railway, Dhanbad.

.....RESPONDENTS.By Advocate :- Shri R.N.Choudhary, ASC.O R D E R

Justice Anwar Ahmad, M[J] :- This application has been filed by Smt. Dhano Devi, W/o Late Rupan, Ex-Chowkidar under PWI/Paharpur, E.C.Railway for the following reliefs :-

[i] To declare the action of the respondents inserting the word 'Pension not admissible' as contained in Annexure-A/1 as non est, illegal and violative of Articles 14, 16 & 21 of the Constitution of India.

[ii] To quash and set aside the order dated 23/27.06.2005 as

contained in Annexure-A/6 together with the order dated 23/29.10.2003 as contained in Annexure-A/4.

[iii] The respondents be commanded to grant the benefit of pension in favour of the deceased employee from the date of retirement and pay the arrears with 25% interest per annum.

[iv] Respondents be directed to grant the benefit of family pension in favour of the applicant and pay the arrears thereof from the date of death of her husband with interest @ 25% upto the date of actual payment.

2. The case of the applicant is that her husband was appointed as casual labourer in the Railway on 01.06.1965. He was decategorised in the year 1980 and thereafter he was absorbed as Chowkidar from 16.07.1980. He superannuated on 30.11.1996. As such he put in qualifying service for pension of 16 years 3 months and 23 days in regular capacity and prior to 1980 in casual labourer capacity. It is stated that her husband held permanent post from 16.07.1980 and hence, he was granted the privilege of pass, etc. admissible to a Railway servant. It is stated that her husband was entitled to pension and after his death she is entitled to family pension.

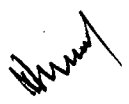
3. The respondents have filed written statement and controverted the claim of the applicant therein. It is stated that late Rupan, husband of the applicant, was appointed as daily rated casual Chowkidar on 16.07.1980 and CPC on 16.02.1981. It is stated that late Rupan superannuated in the capacity of CPC as Chowkidar on 30.11.1996. He was never screened as Chowkidar. It is stated that of course he was allowed all rights and privileges as CPC in

Murthy

terms of Railway Board's circular but till his retirement his service was never regularised and, therefore, he was not entitled to pension or family pension. It is stated that total service of Late Rupan was calculated as 16 years 4 months and 14 days and, therefore, he was not entitled to pension. It is stated that he was never screened and absorbed in a permanent cadre. Lastly, it is stated that the applicant is not entitled to the pension of her husband and family pension.

4. Learned counsel for the applicant submits that services were rendered by the husband of the applicant from 1965 to 1980 as casual labourer and thereafter till 1996 as having regular status, and hence the applicant is entitled to pension and family pension. In support of his contention the learned counsel has referred to several decisions and emphatically stated that the OA be allowed and the reliefs claimed for be granted.

5. The applicant had earlier filed OA 78 of 2003 for the reliefs claimed in the present OA. The OA was disposed of with the direction to the respondents to consider that OA as representation of the applicant and to decide the matter with reasoned and speaking order in accordance with law. The authority considered the matter and came to a finding that the applicant was not eligible for pension. Thereafter the applicant again filed OA 58 of 2004. The Tribunal passed an exhaustive order vide Annexure-A/5 directing the respondents to reconsider the matter and calculate the claim of the applicant for family pension afresh. The respondents, it appears, could not understand the spirit of the order and again came to a finding that the deceased husband of the applicant was not eligible for pension and the widow applicant was also not eligible for family pension.



6. The learned Addl. Standing Counsel for the respondents, on the other hand, submitted that the husband of the applicant was not a regular employee and hence, he was not entitled for the pension. He submitted that the OA is fit to be dismissed and the applicant is not entitled to any relief. He further submitted that the decisions referred to by the learned counsel for the applicant relate to family pension and not to the pension of the service holder. He, therefore, submits that the OA be dismissed.

7. Learned counsel for the applicant submits that he does not press the relief for grant of pension to the deceased and his client will be satisfied with the family pension only. He submits that various decisions referred would show that the applicant is entitled to family pension.

8. Considering the facts and circumstances of the case, arguments advanced on behalf of the both the sides and different decisions, I find that the applicant is entitled to family pension. The impugned order dated 23.06.2005 [Annexure-A/6] is quashed. Respondents are directed to allow family pension to the applicant and calculate the quantum thereof in accordance with law and rules within a period of three months from the date of communication of this order failing which interest @ 9% per annum would be payable.

9. Accordingly, this OA stands disposed of. No costs.

Anwar Ahmad 13/7/09
[Anwar Ahmad]/M[J]
13-07-2009

skj