

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 468/98

Date of Decision: 24-12-98

Mrs. A.K.Gawde

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

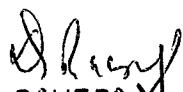
CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Berches of the Tribunal?


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA NO. 468/98

Pronounced this the 24th day of December 1998

CORAM : Hon'ble Shri D.S.Bawej, Member (A)

Mrs. Anita Krishna Gawde,
Widow of Krishna P. Gawde
R/o Opp. I.T.I., O.T.Section,
Ulhasnagar, Thane Dist.

By Advocate Shri G.S.Walia

... Applicant

V/S.

1. Union of India through

General Manager,
Western Railway
Headquarters Office,
Churchgate, Mumbai.

2. Divisional Railway Manager

Mumbai Division,
Western Railway, DRM's Office,
Mumbai Central, Mumbai.

By Advocate Shri V.S.Masurkar

... Respondents

O R D E R

(Per: Shri D.S.Bawej, Member (A))

This application has been filed seeking a direction to the respondents to grant family pension to the applicant w.e.f. 3.8.1980 onwards and to pay the arrears with interest of 18% p.a. thereon. It is also prayed that respondents be directed to pay gratuity, Group Insurance, Leave Salary and any other dues admissible to the applicant under the rules.

2. The applicant submits that her husband late Shri Krishna P.Gawde was an employee of Western Railway w.e.f. 1.8.1976 in the then pay scale of Rs.195-232/- in Class-'D' category. Her husband

became a substitute Khalasi w.e.f. 30.6.1979 and continued so till his death on 2.8.1980. The applicant contends that her late husband was getting Railway passes and other facilities as applicable to temporary Railway servants. She has produced salary documents on record to prove that her late husband a Railway employee was a substitute Khalasi. The applicant's claim is that since her husband was working as a substitute Khalasi, she is entitled for family pension. The applicant made several representations for grant of family pension and finally the respondents as per letter dated 2.7.1995 advised the applicant that she is eligible for family pension and was directed to Settlement Section for the same. However, nothing further was heard from the respondents thereafter inspite of repeated representations by the applicant. Feeling aggrieved, the present application has been filed on 5.6.1998.

3. The applicant has submitted that since her late husband was working as a substitute Khalasi, she is entitled for family pension and denial of the same is arbitrary and violative of Articles 14 & 16 of the Constitution of India.

4. The respondents have filed written statement strongly opposing the application. The respondents submit that the late husband of the applicant expired on 2.8.1980 and the present application has been filed on 5.6.1998 and therefore the application suffers limitation and from delay and laches. The respondents further state that full records are also not available. The respondents

contend that though the applicant was designated as substitute Khalasi but he was never regularised as per Railway Board letter dated 21.10.1965, copy brought on record, the applicant is not eligible for grant of family pension. The respondents submit that the contention of the applicant that deduction from the provident fund confirms that the applicant's husband was a Khalasi is not tenable as the provident fund is deducted even in respect of temporary employee. It is admitted by the respondents that the applicant was directed to contact the office of Respondent No. 2, i.e. Divisional Railway Manager with regard to payment of family pension but the applicant is not entitled for the payment of family pension on the authority of this letter as she was not eligible for payment of family pension as per the extant rules. The respondents, therefore, plead that the present application is not maintainable in law and the same deserves to be dismissed.

5. The applicant has not filed any rejoinder affidavit.

6. I have heard the arguments of Shri G.S. Walia, learned counsel for the applicant and Shri V.S. Masurekar, learned counsel for the respondents.

7. From the rival contentions, it is noted that the basic facts with regard to the engagement of the applicant w.e.f. 1.8.1976 and death subsequently on 2.8.1980 are not in dispute. The whole controversy raised in the OA, hinges on the fact that whether the

applicant's late husband was a substitute Khalasi or not at the time of death. However, before going into merits of this aspect, the issue of delay and laches raised by the respondents shall be gone into.

8. Apart from raising the issue of delay and laches, the counsel for the respondents during the oral arguments also pleaded that the application is barred by limitation. The learned counsel for the applicant during arguments strongly contested the submission of the respondents. He stated that pension is a right which accrued on the date of death and is a recurring cause of action as the pension becomes due every month and therefore any challenge of seeking judicial interference is not barred by limitation. Further, the applicant has been repeatedly reminding the concerned office for grant of family pension but the final response from the respondents was only as per letter dated 2.7.1995 through which the claim of the applicant was accepted. I have carefully considered the rival contentions. I am not inclined to endorse the plea of the respondents that the application is barred by limitation. As contended by the counsel for the applicant that the payment of pension accrues to the employee from the date of retirement/death and therefore it is ⁸ recurring cause of action. In view of this, the plea of limitation raised by the respondents has no merit. As regards delay and laches, it is noted that though the applicant has stated that she has been representing ^{family} about the payment of pension right from the death of her husband but no such representation has been brought on record. The only document which has been brought on

record is the letter dated 2.7.1995 which has been issued in reply to the representation of the applicant dated 14.7.1993. The counsel for the applicant during the arguments repeatedly stated that the applicant had been representing for grant of family pension since 1980 and therefore the present application does not suffer from delay and laches. However, in the absence of any representation brought on record, I am unable to persuade myself to accept the contention of the applicant. However, the aspect of delay and laches and the concern of the same with the relief prayed for has been considered subsequently.

9. Now coming to the merits, the respondents have submitted that full record is not available with them. However, the respondents have contended from the available record that the applicant's husband was working as a substitute Khalasi but since he had been not regularised against a post, he is not entitled for family pension. The applicant, on the other hand, has brought a number of documents on record to establish her contention that her late husband was a substitute Khalasi and therefore her case is covered for grant of family pension as per the extant rules. In the absence ^{with} of availability of the record ~~with~~ the respondents, the claim has to be appreciated based on the documentary evidence brought on record by the applicant. The applicant has brought on record at Ex.-'A' which is a copy of the privilege pass issued to the applicant's husband where the designation of the applicant's husband ^{been} has shown as substitute Khalasi. The next document is

the declaration submitted to the hospital for treatment of the applicant's late husband which also shows the designation of the applicant as Khalasi. The 3rd document relates to payment of provident fund on the death of her husband which shows the designation of the applicant's late husband as substitute Khalasi. The original of this letter is available with the applicant and the same was shown during the hearing. The next document is the pay slip pertaining to the month of February, 1980 which shows that the applicant's late husband was drawing the pay in regular pay scale and was getting overtime and House Rent Allowance. The last document brought on record by the applicant is at Ex.-'E' through which the request for compassionate appointment has been turned down and in this letter/^{also} the applicant's late husband has been shown as substitute Khalasi. From these documents, there is no doubt that the applicant's late husband was designated in the office record as a Khalasi or substitute Khalasi. As per letter dated 2.7.1995 the respondents have advised the applicant that her claim for family pension is admissible and she should contact the Settlement Section for further action. The respondents in the written statement have admitted having issued such a letter but have not indicated as to why no further action was taken. The respondents have not indicated that on what basis this claim was found admissible and why after issuing such a letter advising the applicant to contact the Settlement Section no further action was taken. The respondents submit that mere issue of such a letter does not entitle

the applicant to claim family pension unless and until the same falls within the provisions of the rules. In the absence of any satisfactory explanation from the respondents with reference to the letter dated 2.7.1995, it could be inferred that the respondents had some record available with them which pointed out that the applicant was working as a substitute Khalasi. Further, the ^{on record} respondents themselves have brought the letter dated 16.10.1980 at Ex.-'R-II' with the written statement as per which the death of the late husband of the applicant has been notified and ⁱⁿ there/also the designation has been shown as substitute Khalasi. Accepting that full record ^{be} may not/available with the respondents at such a late stage when the present OA. has been filed in 1998 claiming family pension from 3.8.1980, but based on the documentary evidence brought on record by the applicant and the letter dated 16.10.1980 furnished by the respondents themselves at Ex.-'R-II', I have no hesitation to conclude that the applicant was working as a Khalasi/substitute Khalasi.

10. Now the question which arises is whether the applicant is entitled for pension if he was a substitute Khalasi. The respondents have argued that even though the applicant was working as a substitute Khalasi, he was not entitled for pension since he had not been regularised against Group 'D' post. The respondents have cited letter dated 9.12.1965 of the Railway Board at Ex.-'R-I' with the written statement as per which the applicant

is not entitled for the grant of family pension. The counsel for the applicant during arguments stated that the letter dated 1.11.1965 is not applicable to the case of the applicant as it concerns casual labourers while the applicant's late husband was a substitute Khalasi. The learned counsel for the applicant further submitted that the respondents have not come up with any rules to show that the substitutes are not entitled for pension. The applicant has further relied upon the judgement of the Hon'ble Supreme Court in the case of Prabhavati Devi vs. Union of India & Ors. 1996 (1) S.C. SLJ 89. I have carefully gone through this judgement of the Hon'ble Supreme Court. In this judgement the Hon'ble Supreme Court has held in Railways that a substitute who acquires a temporary status on completion of six months continuous service is entitled for the benefit of family pension as per the extant rules referred to in the judgement. In the present case, it is clear that the applicant's late husband had been working as a substitute Khalasi for more than 4 years before the death and therefore met with the condition of acquiring temporary status after completion of six months continuous service. The learned counsel for the respondents, however, submitted that the judgement in the case of Prabhavati Devi is based on the facts and circumstances obtaining in that case and does not lay down a law which is applicable to all the substitutes. On careful consideration of the decision of Hon'ble Supreme Court in the case of Prabhavati Devi, I am not impressed by the argument of the counsel for the respondents.

As indicated earlier, though the Circular dated 9.12.1965 relied upon by the respondents is not applicable to the case of substitute, the respondents have not brought out any other Circular which specifically denies pension to the substitute who constitute a distinct category from a casual labour. In fact, in the judgement of the Hon'ble Supreme Court in ^{case in} Prabhavati Devi's / Para 5, the learned counsel appearing on behalf of Railways was to asked to indicate any rule to support the order of the Tribunal denying the grant of family pension to the widow of a substitute. In view of this, the contention of the counsel for the respondents does not have any merit. It is / considered that my opinion / the case of the applicant on facts and circumstances is fully covered by the decision in the Hon'ble Supreme Court in the case of Prabhavati Devi and the applicant is entitled for the grant of family pension from the date of death of her husband.

11. After recording the findings with regard to the entitlement for the family pension, the next issue which deserves consideration is whether the applicant is entitled for payment of arrears of the pension. The learned counsel for the respondents during oral submissions stated that in case the Tribunal comes to the conclusion that the applicant is entitled for family pension, in that case, the payment of arrears of the pension should not be allowed on account of delay and laches. The learned counsel for the applicant, on the other hand, vehemently opposed this stating that the right of pension accrued to the applicant from the date of death of her husband and therefore

the due payment has been denied to the applicant. He further argued that the doctrine of 'No pay for no work' is applicable when the employee has not worked on the post but the same does not apply in the matter of pension as the pension becomes due after retirement or death and the question of 'No work no pay' does not arise. Though I agree with the submission of the counsel for the applicant with regard to the doctrine 'No work no pay' being not applicable in the case of pension payment but considering the facts and circumstances of the case I am of the opinion that the applicant does not deserve to be entitled for full payment of arrears from the due date of payment of family pension. As indicated earlier, the applicant has not come out with any satisfactory explanation as to why the matter was not agitated for seeking the legal remedy in case the respondents had failed to grant family pension. No documentary evidence is brought on record to show that she has been following the matter. The only representation which appears to have been submitted in 1993 as referred to in the letter dated 2.7.1995. The present application certainly suffers from delay and laches and therefore the payment of arrears needs to be rejected. It is noted that as per letter dated 2.7.1995 the respondents have accepted the claim of the applicant and asked her to get in touch with Settlement Section for further action. Even thereafter, the applicant sought for legal remedy only in June, 1998. Keeping these facts in view, I am of the opinion that the applicant is entitled for payment of arrears from the month of July, 1995 onwards. The applicant will be also not entitled for payment of interest for the payment of the arrears.

12. During the arguments, the learned counsel for the respondents raised the issue of legal status of the applicant in claiming the family pension. He submitted that in the absence of record, it is not possible for the administration to determine whether the present applicant was legally married to late Shri Krishna P. Gawde. He, therefore, prayed that in case the claim of the applicant for grant of family pension is allowed, the applicant should be directed to produce necessary legal documentary evidence to establish being legal widow of the late Shri Krishna P. Gawde. The counsel for the applicant strongly reacted to the submission of the counsel for the respondents stating that no such plea has been taken in or in any communication the written reply. I have carefully considered the rival contentions in the light of the material brought on record. I am inclined to dismiss the submission of the respondents. It is noted that the respondents have already paid provident fund to the applicant as per the Ex.-'C' to the application. The letter dated 2.7.1995 has been also addressed to the applicant wherein she has been advised that she is entitled for family pension. Further, as per Ex.-'E' the request of the applicant for compassionate appointment had been rejected and this letter also does not show any doubt with regard to her legal status. Keeping in view these observations, the apprehension of the respondents with regard to the legal status of the applicant is unfounded and no direction is required to be given in this direction as prayed for.

13. The applicant has also made a prayer for grant of gratuity, Group Insurance, Leave Encashment and other benefits if any as per the rules. The respondents have not made any averments to this effect in the written reply. Since the findings have been recorded that the late husband of the applicant is to be treated as substitute Khalasi at the time of death, the applicant shall be entitled for the payment of any other/dues like gratuity, Group Insurance, Leave Encashment etc. if admissible as per the rules.

14. In the result of the above, the application is allowed with the following directions :-

- (a) The applicant shall be entitled for the payment of family pension from 3.8.1980 onwards.
- (b) The applicant shall be paid the arrears of pension from July, 1995 onwards till the start of the regular monthly payment of the pension. However, the applicant shall not be entitled for payment of any interest on the arrears.
- (c) The applicant shall be entitled for payment of gratuity, Group Insurance, Leave Encashment etc. as admissible as per the extant rules as applicable to a substitute.
- (d) The compliance of the order shall be done within a period of three months from the date of receipt of the order.
- (e) In the facts and circumstances of the case, there will be no order as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)