

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.126/94

Dt. of order: 12.1.1995

Kanta Bai : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.S.C.Sethi : Counsel for applicant

Mr.M.Rafiq : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Smt.Kanta Bai, widow of late Shri Ram Sahai, has in this application under Sec.19 of the Administrative Tribunals Act, 1985, prayed that she may be declared eligible for getting pension and other retirement/death benefits of her late husband Shri Ram Sahai, Trolleyman, who while posted under FNI Bhawani Mandi, expired on 25.11.'87. She has further prayed that the respondents may be directed to pay Provident Fund contribution, Gratuity, Deposit Link Insurance, Group Insurance and arrears of pay from 2.7.77 to 25.11.87, and leave encashment as due to him.

2. At the outset the learned counsel for the applicant stated that the claim of the applicant was confined to grant of Family Pension to her on account of the death of her husband and payment on account of leave encashment for a period of 102 days.

3. The facts of the case as stated by the applicant are that late Shri Ram Sahai, her husband, joined the Railways as a substitute Trolleyman on 6.10.75. He was granted temporary status w.e.f. 2.7.'77 vide AEN Koda order dated 30.12.88. This fact has been mentioned in letter Annx.A.4 dated 15.4.'89 issued by the FNI Bhawani Mandi. The applicant was screened for permanent absorption and he was declared successful on screening as is evident from Annx.A1 dated 15.12.90. The applicant had secured the first position in the screening test as seen from page 10 of the paper book. The applicant died in harness on 25.11.87. Orders of regularisation of his service were not issued till his death due to delay on the part of the Railway authorities. After the death

of the applicant's husband she applied for employment on compassionate ground but the request was turned down on the ground that her husband was not a regular employee of the Railways. The applicant was also not allowed other benefits to which she was entitled on account of the death of her husband, which included payment for encashment of leave of 102 days. Annexes A4 & A5 dated 15.4.89 and 17.11.90 respectively show that the leave to the credit of the applicant's husband was quantified as 102 days and payment for the same is due to the applicant. The applicant's husband should be deemed to have been regularised on the date of his death on any date prior to his death. Therefore, she, being the widow of a Railway servant, should be entitled to receive Family Pension on account of her husband's death.

4. No reply has been filed on behalf of the respondents in spite of the fact that on 2.5.94 when the learned counsel for the respondents was present, 4 weeks time was granted for filing the reply.

5. During the arguments, the learned counsel for the applicant drew attention to rule 101 of the Manual of Railway Pension Rules, according to which retirement benefits in the case of a temporary Railway servant include Family Pension if at the time of his death the employee had completed one year's continuous (qualifying) service'. The learned counsel for the applicant argued that the applicant had put in service of more than 10 years even from the date with effect from which he had been granted temporary status namely 2.7.'77. Since he had been found successful on screening and his name was number one in the list of persons who had been declared successful on screening, the applicant's husband should have been treated as a regular employee in the Railways and if no order treating the applicant as a regular employee was passed till his death on 25.11.'87, the applicant's husband cannot be blamed. The applicant's husband should therefore be deemed to have been regularised before his death and the applicant, being his widow, would be entitled to Family Pension in terms of Rule 101, supra. He also cited a number of judgments of various Benches

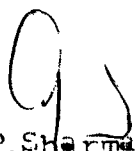
of the Tribunal to show that Family Pension would be admissible in the circumstances of the case. The first judgment cited by him is of this Bench of the Tribunal in C.A.No.290/92 in Smt. Naini Bai Vs. Union of India & Ors. delivered on 14.9.94. In this judgment it has been held inter alia, that the expression 'Railway servant' includes one who is a temporary status holder. Therefore, the family of a temporary status holder who died while in service would be entitled to Family Pension. Another judgment cited is that of Calcutta Bench of the Tribunal in Geeta Bai Samantha Vs. Union of India & Ors. delivered on 14.5.93, reported at 1993<sup>(6)</sup> SLR 457 CAT Calcutta. In this judgment the Calcutta Bench has held that since the husband of the deceased was entitled to be regularised in service at least from the date of his death, the applicant, his widow, was entitled to Family Pension as per rules. Another judgment cited is in the case of Smt. Shagbati Nayak Vs. Union of India & Ors. delivered by Calcutta Bench of the Tribunal on 3.2.93 and reported at 1993(3)SLR 245 CAT Calcutta. In this judgment, the Tribunal noted that the applicant's husband had been working continuously for over 14 years. Thus, the service of the applicant's husband were required continuously for that long period. In the circumstances of that case, the Tribunal held that the applicant's husband would be deemed to have been regularised and Family Pension as per rules would be admissible to his family. The Family Pension was however ordered to be granted prospectively from May 1992 which presumably is the date on which the application was filed before the Tribunal. Therefore, according to the learned counsel for the applicant, in view of all these judgments and reasons given in the application, the applicant is entitled to Family Pension.

6. The arguments of the learned counsel for the applicant have been considered, and records have been perused and the rules and the judgments cited have been gone through. As per Rule 101, the applicant's family would be entitled to Family Pension if the applicant had completed at least one year's continuous (qualifying) service. The applicant who was granted temporary status w.e.f.

2.7.'77 served the Railways upto 25.11.87, i.e. for a period of more than 10 years from the deemed date of grant of temporary status. It can therefore be said that there was need for his services by the Railways. He had also been declared successful in the screening test held for permanent absorption in Jan. 1987 i.e. about 10 months before his death and his name was at serial number one of the persons who were successful in screening. Apparently, therefore, before a formal order declaring the applicant as a regular employee was passed, he expired. In the circumstances of the present case, therefore, the applicant's husband should be deemed to have been regularised in service when he died. Since he had put in more than 10 years service from the date of grant of temporary status, he can be said to have put in <sup>at least</sup> more than one year's qualifying service till the date of his death. In view of the judgment of the Tribunal in the case of Bhagwati Nayak cited above, the respondents are directed to grant Family Pension to the applicant from the date of presentation of this O.A. i.e. on 16.3.94. Payment of Family Pension including arrears due from 16.3.94 shall be paid to her within a period of 4 months from the date of the receipt of a copy of this order.

7. As regards the Leave encashment, it is apparent from Annex.A4, A5 and A6 that the period for which encashment is due has been quantified at 102 days and the payment was also to be made to the applicant. It is unfortunate that so far however no payment has been made. The respondents are directed to make payment of the amount in lieu of leave encashment within a period of 4 months from the date of the receipt of a copy of this order.

8. The O.A. is allowed accordingly with no order as to costs.

  
(O.P.Sharma).  
Member(A).