

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R .

...

O.A.NO. 203/1994

Order dated: 3.4.1996

Smt. Lalita Devi

: Applicant

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Sr. Divisional Personnel Officer, Western Railway, Kota Division, Kota.

: Respondents.

Mr.S.Kumar, learned counsel for the applicant
Mr. M. Rafiq, learned counsel for respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER(J)

O R D E R

(PER HON'BLE SHRIRATAN PRAKASH, MEMBER (JUDICIAL))

The applicant Smt. Lalita Devi has filed this application Under Section 19 of the Administrative Tribunals' Act, 1985 to claim family pension and for release of all other dues of her husband as per rules alongwith arrears.

2. Facts which are not largely in dispute are that Shri Radhey Lal the deceased husband of Smt. Lalita Devi was initially appointed on the post of

SM

(10)

-: 2 :-

Non-approved candidate cleaner on 24.7.1968 with the Respondents Railways. He was granted temporary status on this post on rendering 120 days continuous service and was allowed annual grade increments and his last pay drawn was Rs.73/-. Shri Radhey Lal died while in service on 22.1.1972. It is the case of the applicant that she took up the matter for grant of pensionary benefits to her on account of the death of her husband but unfortunately she lost all the relevant documents on account of a theft in her house. She made a representation on 6.8.1989 (Annex.A-3) which was dis-allowed by the respondents vide their letter dated 10.6.1991 (Annex.A-4) informing her that since her husband was only a temporary status grantees employee, she is not entitled for pensionary benefits. She again made a detailed representation on 6.9.1991 (Annex.A-5) which was finally rejected vide order dated 15.5.92 (Annex.A-1). Aggrieved, she has approached this Tribunal to claim the aforesaid relief basing her claim on the Family Pension Scheme, 1964 and having ^{her husband} completed more than one year of service.

3. The respondents have opposed this application by filing a written reply to which no rejoinder has been filed. The stand of the respondents has been that since the deceased husband of the applicant was engaged only as a non-approved candidate and he was neither screened, nor placed on screening panel and expired on 22.1.1972 while serving as a temporary status employee, she is not entitled to claim any

..../3

(11)

pensionary benefits. The respondents have also taken a plea of limitation on the ground that since the deceased employee died in 1972, the application now filed in the year 1994 is highly belated and should be rejected on this ground also.

4. I have heard the learned counsel for the applicant as also for the respondents.

5. The only point for determination in this OA is whether the applicant is entitled for pensionary benefits even though her deceased husband was a temporary status holder with the Respondents Railways ?

6. On the point of limitation, it is suffice to mention that the applicant's version in para 2 of the OA to the effect that on account of theft in her house, she could move the respondents on 6.8.1993; has not been denied by the respondents. Her representations seem to have been rejected finally on 15.5.1992 (Annr:A-1). The delay thus, if any, in filing OA on 21.4.1994 is condonable in the facts and circumstances of this case. The objection in this regard raised by the respondents, is therefore, rejected.

7. Coming now to the plea of grant of family pension, the controversy now has been finally settled by Hon'ble the Supreme Court in the case of Prabhawati Devi Vs. Union of India and others, 1996(1)ATJ 281 wherein it has been laid down that even a casual

12

-: 4 :-

labour acquiring status of a substitute after completion of 6 months continuous service is entitled to family pension under Rule 3 (b) of Rule 2311 of the Indian Railway Establishment Manual. In this case it is undoubted that the deceased husband of the applicant was appointed in the year 1968 and he expired in the year 1972 i.e. he has completed more than one year of continuous service with the Respondents Railways. Moreover Chapter XXIII, Para 2311(3B) of the Indian Railway Establishment Manual provides for the grant of family pension in respect of temporary Railway Government Servant who have completed not less than one year continuous service. The said provision reads as under:-

"2311(3 (b) The widow, widower, minor children of a temporary Railway servant, referred to in the preceeding sub-para, who dies while in service after a service of not less than one year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. In their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's two months pay on which the death gratuity is determined."

Further the Family Pension Scheme of the Railway Employees, 1964 prescribes the eligibility conditions for payment of family pension. This scheme came into force w.e.f. 1.1.1964 and is applicable to all railway employees who are in service on 1.1.1964 or are recruited thereafter. The relevant provisions

Dr

.../5

13

-: 5 :-

of this Scheme are as under:-

"(1) The Family Pension will be admissible in case of death while in service or after retirement on or after the 1st Jan.1964, if at the time of death, the retired officer was in receipt of a compensation, invalid retiring or superannuation pension. In case of death while in service the Railway servant should have completed a minimum period of one year of service.

(ii) 'Family' for purposes of this Scheme will include the following relatives of the Railway Servant.

- (a) wife, in the case of a male railway servant;
- (b) husband, in the case of a female railway servant;
- (c) minor sons; and
- (d) unmarried minor daughters..

Children adopted legally before retirement will be covered in (c)&(D).

(2) Without prejudice to the provisions contained in Sub-rule(3) where a Government servant dies.-

(a) after completion of one year of continuous service, or

(aa) before completion of one year of continuous service provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government servant, or

(b) after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 37.

The family of deceased shall be entitled to family pension 1964 (hereinafter in this rule referred to as family pension)."

A perusal of the above provisions make it abundantly clear that irrespective of the status of a Railway Government servant, every railway servant who has been in continuous service of one year is eligible for payment of family pension. The deceased husband of the applicant, in the instant case also, has remained in service with the Respondents Railways for over a year. She accordingly is also entitled for

Sp

.../6


-: 6 :-

not

family pension and she would be dis-allowed this relief merely on account of the fact that the deceased husband of the applicant was a temporary status holder. Since the law has now been settled by Hon'ble the Supreme Court in the case of Shrimati Prakhawati Devi (supra).

8. Consequently, while answering the issue raised in this OA in the affirmative, and while allowing the application, the respondents are directed to grant family pension to the applicant Smt. Lalita Devi as per rules ~~being~~ widow of the deceased husband who was a temporary status holder, and treating him a temporary employee for all purposes. The Pension Payment Order should be issued by the respondents within a period of three months of the receipt of copy of this order.

9. The OA is disposed of accordingly with no order as to costs.


(RATAN PRAKASH)
MEMBER (J)