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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A.No.207/96

Date of order: 2.12.1997

Smt. Laxmi Bai W/o late Shri Chauthmal, aged 55 years, Infront of Radha Provision Stores, near Gujarati Bricks Factory, Topdara Ajmer, Shri Chauthmal was working as Hamal under D.R.M. Ajmer.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer.

: Respondents

Mr. N.K.Gautam, counsel for the applicant
Mr. B.S.Mathur, counsel for the respondents

CORAM:

HON'BLE SRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant herein Smt. Laxmi Bai has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to seek the following directions against the respondents:-

- i) to declare that the applicant is entitled for the payment of family pension w.e.f. 10.10.1975;
- ii) to make her payment of family pension alongwith the payment of arrears of pension w.e.f. 10.10.1975 and interest thereon;
- iii) to make her payment of difference of D.C.R.G. after calculating the correct amount of D.C.R.G. alongwith interest accrued on its total amount;
- iv) to provide appointment on compassionate ground to one of the family members of the deceased employee Shri Chauthmal.

2. The facts giving rise to the aforesaid application, in brief, are that Shri Chauthmal, the late husband of the

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applicant was granted temporary status against a clear cadre vacancy as a Class IV staff in Divisional Superintendent Office (now called as 'D.R.M. Office' Ajmer) w.e.f. 1.9.1965 vide Annexure A-2. He died on 9.10.1975 while in service (Annx.A-3).

3. It is the case of the applicant who is the widow of Shri Chauthmal, that being an illiterate lady of backward and poor family and ignorant of service rules presumed that she was not entitled to any service benefits due to demise of her husband while in service. As soon as she came to know that there exists the right of family pension, D.C.R.G. etc., for the welfare of the families of employees who died while in service, she sent a notice to respondent No.2, the Divisional Railway Manager, Western Railway, Ajmer on 2.9.1994 (Annx.A-4). The Divisional Railway Manager vide communication dated 23.1.1995 (Annx.A-5) advised the applicant that she was neither entitled for family pension, nor appointment of one of the family member of the deceased employee on compassionate grounds. Alongwith this letter, a Cheque of Rs. 1183/- as Temporary Status Gratuity amount to the applicant was also sent to her without specifying the details. On 9.3.95 vide Annx.A-1 she sent a legal notice to the respondents which remained unresponded by the respondents. It is further the case of the applicant that later on through some reliable sources she learnt that vide Office Letter No.ED/840/2/Pt.II dated 8.5.1972 the deceased husband of the applicant Shri Chauthmal was promoted as Peon on regular basis. The copy of the letter being not available with her at the time of filing this OA, she has desired that it should be called for from the

respondents. It has, therefore, been claimed by the applicant that her husband having been regularised before his death, she is entitled to family pension, as per the Family Pension Scheme for Railway Employees, 1964. She has also claimed compassionate appointment to one of the family member of the deceased employee on compassionate ground as per Railway Service Rules to this effect. Having remained unsuccessful she has approached the Tribunal to claim the aforesaid reliefs.

4. The respondents have opposed this application by filing a written reply. The stand of the respondents has been that the applicant's husband was a Temporary Status holder in 1975 and expired before regularisation in service. According to the respondents since the temporary employees are not entitled to get pension/family pension, hence the applicant is not entitled to get family pension w.e.f. 10.10.1975. Regarding the claim of the applicant to seek appointment on compassionate ground, it has been averred that since the husband of the applicant was only a Casual Labour with temporary status and also did not expire due to any accident while on duty, but died because of natural death, this claim also is not tenable. The respondents have also taken the plea of limitation in filing this application as also the legal plea that in the same OA applicant cannot ask for two reliefs i.e. to claim family pension and also an appointment on compassionate ground as laid down under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. It has, therefore, been prayed that the application deserves rejection.

5. The applicant has also filed thereafter a rejoinder alongwith an office order dated 8.5.1972 (Annx.A-6) whereby the deceased railway employee Shri Chauthmal has been promoted on the post of Peon after being regularised.

6. I have heard the learned counsel for the applicant and also for the respondents at great length and have examined the record in great detail.

7. On the claim made by the applicant regarding compassionate appointment to one of the family members of the deceased employee Shri Chauthmal, it is suffice to mention that the applicant has not given any details whatsoever for whom the compassionate appointment is sought for. Further also no details has been given as to whether any request was made to the respondents to claim compassionate appointment before 2.9.1994, the date on which a legal notice was given by the applicant, nor there are any particulars as to whether any effort was made in this direction between 9.10.1975, the date when her husband Shri Chauthmal died till 2.9.1994 when the notice was given to the respondents. Besides this, in the same OA only one relief is permissible to be entertained under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. For all these reasons, the claim made by the applicant to seek appointment on compassionate ground for one of the family members of the deceased employee Shri Chauthmal does not succeed. The prayer made in this behalf is rejected.

8. Coming now to the aspect of family pension claimed by the applicant, it has to be seen on facts whether the

applicant is entitled to get such a relief. It has been vehemently contended by the learned counsel for the respondents that the applicant's late husband being a temporary status holder and not having been regularised the claim for pension is not entertainable. In this regard, the factual position as brought out by the applicant in her application and her rejoinder is that not only the applicant's husband was conferred temporary status w.e.f. 1.9.1965 vide Annexure A-2, but also that Shri Chauthmal was regularised and promoted to the post of Peon vide order dated 8.5.1972 (Annx.A-6). The original of this order has also been made available by the learned counsel for the applicant for perusal. It is thus abundantly clear that deceased husband of the applicant was regularised vide order dated 8.5.1972 (Annx.A-6) and he served with the respondents railways till he expired on 9.10.1975. Further it has now been settled by Hon'ble the Supreme Court in the case of Union of India & Ors. V. Rabia Bikaner etc. JT 1997(5) S.C. 95; while observing at page 96 that "It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening"; and held "On their appointment they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be

eligible to pension under the Family Pension Scheme, 1964." Therefore, there remains no doubt that in the instant case also the applicant's husband Shri Chauthmal was a temporary status holder in the year 1965 and was regularised vide order dated 8.5.1972 and further continued to serve the respondents railways till he died on 9.10.75 i.e. the deceased Chauthmal had served the respondents railways for more than one year after being regularised and as such the applicant is entitled to get family pension as per Family Pension Scheme, 1964.

9. The only question which now remains for consideration is that from which date the applicant is entitled to get Family Pension ? On this aspect, a plea of limitation has been raised by the learned counsel for the respondents. It has been urged that since the deceased Shri Chauthmal died in the year 1975 and the applicant did not initiate any action to claim family pension till the year 1994, the claim now advanced by the applicant is barred by limitation. On this aspect, it has to be noted that though the applicant did not initiate any steps to claim family pension on account of the services rendered by her deceased husband Shri Chauthmal before 2.9.1994, but the respondents also on their part for the first time wrote to the applicant vide their communication dated 23.1.1995 (Annx.A-5) that the applicant is neither entitled for family pension, nor she can claim appointment on compassionate ground for any of the member of the deceased employee since the relief of extending appointment on compassionate grounds has been extended w.e.f. 31.12.1986 only. Thus, it is clear that though the request made by

applicant is highly belated one, yet as far as the relief of claiming family pension is concerned it cannot be rejected solely on the ground of limitation. In the case of M.F. Gupta Vs. Union of India, (1995) 31 ATC 186, it has been held by Hon'ble the Supreme Court that the grievance with regard to pension is continuing wrong giving rise to the recurring cause of action subject to the rider that the consequential relief regarding payment of arrears would be subject to the bar of limitation. In the instant case though the applicant has not approached the Tribunal to claim family pension within limitation, yet her right to claim family pension being a recurring cause of action and she having been communicated disallowing it by the respondents vide their communication dated 23.1.1995 (Annx.A-5), it cannot be said that the OA filed on 28.3.1996 is barred by limitation. However, it has to be observed that the entitlement of the applicant to claim arrears of the family pension would be limited from the date of giving the first legal notice to the respondents on 2.9.1994 (Annx.A-4) onwards and not before it. The applicant's claim to get family pension w.e.f. 10.10.1975 till 2.9.1994, the date of service of notice to the respondents is dis-allowed.

10. The O.A., therefore, is partly allowed with the following directions to the respondents:-

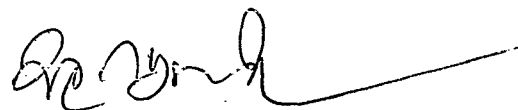
- i) the respondents shall pay to the applicant family pension w.e.f. 2.9.1994 as per calculations done in accordance with Railway Employees Family Pension Scheme, 1964 after the applicant fulfils all the requisite formalities to get family pension and as directed by the respondents. The applicant shall complete the requisite formalities to get family pension as directed above, within two months from the date of receipt of a copy of this order;

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- ii) after the applicant complies with the above formalities, the respondents shall issue necessary orders for payment of family pension to the applicant within three months;
- iii) the applicant shall also be entitled for payment of interest @ 12% p.a. on the arrears of family pension from 2.9.1994, till the date of payment in compliance of above directions;
- iv) the respondents while issuing orders as directed above, shall also adjust the payment already received by the applicant on account of gratuity payment and pay him necessary balance amount in this regard as per Payment of Gratuity Rules in force.

The relief to claim appointment on compassionate grounds to one of the family members of the deceased Shri Chauthmal stands dis-allowed.

11. The O.A., is disposed of accordingly with no order as to costs.



(Ratan Prakash)
Judicial Member