

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.238/2001

Date of order: 7/2/2022

Smt.Kasturi W/o late Shri Prem Chand, R/o House
No.148 E, Pukka Bunglow, Delhi Lane, Railway Colony,
Bandikui, Distt.Dausa.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly,
Churchgate, Mumbai
2. Divisional Railway Manager, W.Rly, Jaipur Division,
Jaipur.
3. Divisional Mechanical Engineer, DRM Office, W.Rly,
Jaipur Division, Jaipur.

...Respondents.

Mr.P.K.Sharma : Counsel for applicant

Mr.T.P.Sharma : Counsel for respondents.

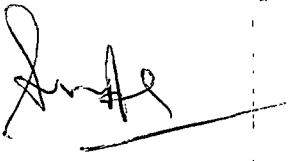
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985,
the applicant makes a prayer to direct the respondents to
pay her family pension from the date of death of her
husband.

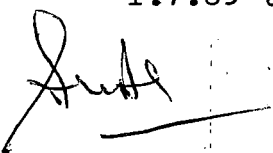
2. In brief, the case of the applicant is that her
husband Sh.Prem Chand was initially appointed on the post of
Safaiwala in English Medium Railway School, Bandikui on
2.1.78 after following due process of selection and he was
paid Rs.858/- per month as salary. It is stated that the
deceased employee confirmed on the post and he was
transferred to Carriage Department, Bandikui on 15.7.79. He
was promoted to the grade of Artisan Khalasi vide order



perused the whole record.

6. The learned counsel for the applicant has argued that (i) Shri Prem Chand was initially engaged as substitute Safaiwala and was conferred temporary status on 2.5.78. He was transferred to Carriage department vide order dated 1.7.89 and has shown as regular in the order of transfer. Subsequently he was given promotion w.e.f. 1.3.93 on the post of Sr.Safaiwala and died on 4.5.95 while in service. Hence the case of the applicant is covered by the judgment of the Apex Court in Prabhavati Devi Vs. UOI, (1996) SCC 27. Thus, the applicant is entitled to family pension; (ii) Shri Prem Chand died while working on the post of Sr.Safaiwala on 4.5.95 and till his death the error of wrongly treating him as regular and wrongly promoted him as Sr.Safaiwala was not detected. Therefore, after death of Sh.Prem Chand it does not lie in the mouth of the respondents' department to say that Shri Prem Chand died only as a substitute having temporary status and he was wrongly shown as regular in the transfer order and wrongly promoted on the post of Sr.Safaiwala. In support of his contentions, the learned counsel for the applicant has referred, (i) Ramkrishan Vs. UOI, CAT (Jabalpur) 1989(7) SLR 88; (ii) Gurcharan Singh Vs. UOI (Pb.& Hry. High Court) 1991(5) SLR 464; (iii) Harvinder Kaur Vs. The State of Punjab(Pb.&Hry. High Court), 1992(3) SLR 785 and (iv) Guman Singh Vs. State of Rajasthan (Raj.High Court) 1999(1) SLR 179.

7. On the other hand, the learned counsel for the respondents while opposing the aforesaid arguments, stated that the applicant was not regularised till his death and he was wrongly shown as regular in the transfer order dated 1.7.89 and he was wrongly upgraded/promoted on the post of



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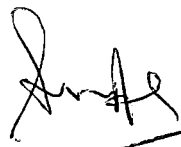
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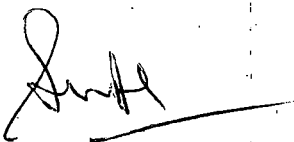


dated 9.11.90 in the pay scale Rs.775-1025 and worked as Sr.Safaiwala. He expired on 4.5.95 while in service. It is stated that Sh.Prem Chand was permanent employee and worked with the department for more than 17 years. Therefore, the applicant is entitled to family pension but the respondents' department denied the same which is arbitrary and in violation of Rules. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply, it is stated that Shri Prem Chand was engaged on the post of Avgi Safaiwala in English Medium Railway School, Bandikui and was conferred temporary status w.e.f. 2.5.78. It is stated that the deceased Prem Chand was never regularised by the Railway administration and he was transferred to Carriage department vide order dated 1.7.89 but by mistake the deceased Prem Chand was shown as regular employee in the aforesaid transfer order and subsequently he was given the benefit of upgradation w.e.f.1.3.93 on the post of Sr.Safaiwala. It is stated that after death of Sh.Prem Chand, at the time of verification of service record, it was found that the actual status of the applicant was temporary and he had never been regularised on the post of Safaiwala. Therefore, the applicant was rightly denied pension. Thus, the applicant has no case for interference by this Tribunal.

4. Rejoinder has also been filed stating that the applicant was given permanent status and thereafter promotion/upgradation on the post of Sr.Safaiwala was given. It is also stated that the respondents are estopped for taking such plea after death of the deceased employee Shri Prem Chand.

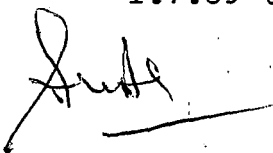
5. Heard the learned counsel for the parties and also



perused the whole record.

6. The learned counsel for the applicant has argued that (i) Shri Prem Chand was initially engaged as substitute Safaiwala and was conferred temporary status on 2.5.78. He was transferred to Carriage department vide order dated 1.7.89 and has shown as regular in the order of transfer. Subsequently he was given promotion w.e.f. 1.3.93 on the post of Sr.Safaiwala and died on 4.5.95 while in service. Hence the case of the applicant is covered by the judgment of the Apex Court in Prabhavati Devi Vs. UOI, (1996) SCC 27. Thus, the applicant is entitled to family pension; (ii) Shri Prem Chand died while working on the post of Sr.Safaiwala on 4.5.95 and till his death the error of wrongly treating him as regular and wrongly promoted him as Sr.Safaiwala was not detected. Therefore, after death of Sh.Prem Chand it does not lie in the mouth of the respondents' department to say that Shri Prem Chand died only as a substitute having temporary status and he was wrongly shown as regular in the transfer order and wrongly promoted on the post of Sr.Safaiwala. In support of his contentions, the learned counsel for the applicant has referred, (i) Ramkrishan Vs. UOI, CAT (Jabalpur) 1989(7) SLR 88; (ii) Gurcharan Singh Vs. UOI (Pb.& Hry. High Court) 1991(5) SLR 464; (iii) Harvinder Kaur Vs. The State of Punjab(Pb.&Hry. High Court), 1992(3) SLR 785 and (iv) Guman Singh Vs. State of Rajasthan (Raj.High Court) 1999(1) SLR 179.

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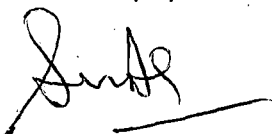


Sr.Safaiwala w.e.f. 1.3.93 and this mistake was detected after the death of Sh.Prem Chand, at the time of verification of his service record. Therefore, the widow of Sh.Prem Chand is not entitled to family pension.

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

9. Admittedly, the Sh.Prem Chand was engaged as substitute Safaiwala in the year 1978 and he was conferred temporary status on 2.5.78. Thereafter, he was transferred to Carriage department vide order dated 1.7.89 and in the transfer order Sh.Prem Chand has been shown as regular and subsequently he was promoted on the post of Sr.Safaiwala, w.e.f. 1.3.93. Sh.Prem Chand died on 4.5.95 while in service. Till his death the respondents' department did not come to know that Sh.Prem Chand was only a substitute having temporary status. In the documents produced by the applicant it appears that the Principal, Railway School, Bandikui wrote a letter to DMO on 18.11.81, to issue identity card in favour of Sh.Prem Chand, Safaiwala. In this letter, Sh.Prem Chand has not been shown as substitute temporary status holder. Similarly in a letter dated 25.9.86 the Principal, Railway Higher Secondary School, Bandikui, has allotted one quarter in the name of Sh.Prem Chand in which Sh.Prem Chand has been shown as Safaiwala and no where Sh.Prem Chand was shown as substitute having temporary status. The respondents department failed to produce any convincing evidence to establish the fact that Sh.Prem Chand was never regularised before his death.

10. Hon'ble Apex Court in Prabhavati Devi Vs. UOI, 1996 (7) SCC 27, held that widow of substitute Railway employee



is entitled to family pension.

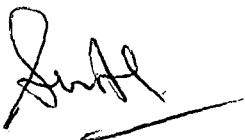
11. In Guman Singh Vs. State of Rajasthan (supra) the Rajasthan High Court held that once the State permitted the voluntary retirement under the provisions of rules, thereafter the State is estopped to take the plea that the petitioner had not completed the qualifying service of 20 years required for grant of pension.

12. In Smt. Kamini Srivastava Vs. UOI & Ors, it was held by the Lucknow Bench of the Tribunal that the applicant's husband was working as substitute in Railways and was granted temporary status, died after serving 11 years, the widow of such employee is entitled to family pension.

13. In M.G. Ramani bai Vs. UOI & Ors, 1997(36) ATC 603, it was held by Ernakulam Bench of the Tribunal that husband of the applicant working as substitute against a sanctioned post and if he dies the widow of such employee is entitled to family pension.

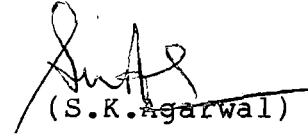
14. In the instant case, after death of Sh. Prem Chand, it does not lie in the mouth of the respondents' department that Sh. Prem Chand was substitute having temporary status only and he was never regularised before his death. Therefore, in view of the facts and circumstances of this case and settled legal position, I am of the opinion that the widow of Sh. Prem Chand, Smt. Kasturi, is entitled to family pension, after death of her husband Sh. Prem Chand, Sr. Safaiwala.

15. I, therefore, allow this O.A and direct the respondents to pay family pension to the applicant from the date Sh. Prem Chand died. The applicant is also entitled to arrears of pension with interest at the rate of 12% per annum till she is not paid the arrears. The whole exercise must be completed within 3 months from the date of receipt



of a copy of this order.

16. No order as to costs.



(S.K. Agarwal)

Member (J).