

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, Jaipur.

O.A. No. 261/2002
T.A. No.

198

DATE OF DECISION 12-12-2003

Moolia _____ Petitioner

Mr. Nand Kishore _____ Advocate for the Petitioner(s)

Versus

UOI and two others. _____ Respondent

Mr. T.P. Sharma _____ Advocate for the Respondent(s)

GRAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *yes*

A.K. Bhandari
(A.K. Bhandari)
Administrative Member.

J.K. Kaushik
(J.K. Kaushik)

Judicial Member.

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR.

12th day of December, two thousand three.

O.A. No. 261/2002

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Moolia
S/o Poonjia
Gangman,
CPWI (C)
JAIPUR.

:Applicant.

VERSUS

1. Union of India through
the General Manager,
North Western Railway,
JAIPUR.
2. The Chief Project Manager, (Constructions)
Opp, to Railway Hospital,
Jaipur.
3. The Divisional Railway Manager,
North Western Railway,
Jaipur.

: Respondents.

Mr. Nand Kishore: Counsel for the applicant.

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



ORDER.

Per. Mr. J.K. Kaushik, Judicial Member.

Shri Moolia has filed this O.A for seeking a direction to the respondents to make payment of family pension taking into consideration the services rendered by his wife Smt. Mehata Sakaria and also other retiral benefits along with interest. He has also sought a direction to amend the Rule 2005(A) of IREM, Vol. II, however, this part of relief has been abandoned by the learned counsel for the applicant at the time of hearing of this case.

2. We have heard the learned counsel for the parties at a considerable length and have bestowed our consideration to the pleadings and the records of this case.

3. The abridged admitted facts of this case as culled from the pleadings depict that the applicant is the husband of Smt. Mehata Sakaria. Smt. Mehata Sakaria was initially engaged as Casual Labourer i.e. Khalasi on 5.12.81. She was granted temporary status and brought in the graded scale of pay with effect from 1.1.84 vide order dated 18.5.87(Annex. A.1). She was contributing to the Provident Fund Account and she was also subjected to medical examination on 15.4.87, wherein she was found medically fit for C.I category. She was also regularised vide letter dated 4.9.97(Annex. A.6). Her name finds place at Sl. No. 30.

4. Smt. Mehata Sakaria was suffering from T.B. and she had to remain on sick leave from 21.2.99. She was being treated in the Railway Hospital Dahod, from where she was referred to Jagjivan Ram Hospital of Western Railway for further treatment and she was being treated as indoor patient from 1.12.97 to 2.1.98 for 34 days and thereafter she remained under treatment till 14.9.2001 when she expired. Smt. Mehata Sakaria was survived with the applicant(her husband) three unmarried daughters and

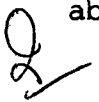


two sons.

5. As regards variance in the facts of the case of the applicant, ^{it} is that due family pension and other retiral benefits have not been released by the respondents to the applicant as a result of the death of the railway servant i.e. Smt. Mehata Sakaria. It is also pleaded that the applicant is fully entitled for grant of these benefits.

6. As regards the stand of the respondents in the pleadings, it is averred that the applicant has not preferred any appeal and the OA is also not filed within the period of limitation and therefore the same deserves to be dismissed on these grounds. It is also averred that certain payments have been made to the applicant and certain payments were also made to late Smt. Mehata Sakaria herself. The applicant's wife had completed only 6 years and 25 days qualifying service and therefore she was not eligible for pension since she had not completed 10 years of qualifying service and for want of minimum service for pensionary benefits, she was not granted pension and therefore the applicant was not entitled to any family pension. There was also certain confusion regarding the information about the death of Smt. Mehata Sakaria, due to which there was some delay in settlement of the case and hence the applicant is not entitled to get any relief.

7. The learned counsel for the applicant has submitted that for grant of family pension, normal rules for grant of pension are not required to be fulfilled and there is a specific provision for grant of family pension as per the Family Pension Scheme for Railway Servants, 1964. He submitted that the applicant is fully entitled for family pension and other retiral benefits. He has invited our attention to a communication dated 20.3.2002, wherein the name of Smt. Mehata Sakaria was mentioned and in the remarks column against her name the words "expired" has been mentioned and that would mean the department had sufficient information about the death of the railway servant. There was no delay on the part



of the applicant in submitting papers for grant of family pension. He has also invited our attention to a judgement of the coordinating Bench at Ahmedabad in Smt. Vallam Badia vs. Union of India and others [2003 (2) SLJ CAT 271] to which one of us (J.K. Kaushik) was a party to the judgement and has submitted that even one is not regularised and has only got temporary status he would be entitled for the grant of family pension in case such railway servant has expired. However, he has submitted that in the instant case, the applicant is on a better footing than that of the husband of Smt. Vallam Badia (supra) in as much as the applicant's wife was admittedly regularised and she was holding Group "D" post on a regular basis.

8. On the contrary, the learned counsel for the respondents has reiterated the facts and grounds mentioned in the reply of the respondents. He has submitted as per the rules in force, the spouse could be entitled to family pension if the deceased Government servant had completed 10 years regular service, which the applicant's wife did not render in this case. He has also submitted that settlement papers were not submitted in time by the applicant and there was delay on the part of the applicant himself. However, to a specific query made to the learned counsel for the respondents as regards the issuance of PFO and the grant of family pension, the reply was in the negative and he submitted that no family pension has been granted to the applicant. He also submitted a list indicating details of various amounts which have been paid to the applicant and the same is taken on record as a part of this case. He has submitted that whatever was due to the applicant, has already been paid and there remains nothing to be adjudicated in this application

9. We have considered rival contentions submitted on behalf of both parties. To appreciate controversy involved in the case we find it expedient to extract the relevant provisions relating to the grant of family pension which reads as under:



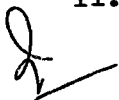
Family Pension Scheme for railway servants, 1964.

- (1) The provisions of this rule shall apply:-
(a) to a railway servant entering service in a pensionable establishment on or after 1st January 1964; and
(b) xxx xxx xxx
- (2) Without prejudice to the provisions contained in sub-rule (3) where a railway servant dies:-
(a) after completion of one year of continuous service or
(b) before completion of one year of continuous service provided the deceased railway 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 railway service;
(c) 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 53.

Applying the aforesaid provisions to the instant case, admittedly, the applicant's wife was a regular employee and she had completed more than one year continuous service; she was also medically examined and in this way of the matter, the applicant is fully entitled for grant of family pension in every respect. The family pension is different from the ordinary pension; in as much as there is no requirement of minimum qualifying service of 10 years for grant of family pension and minimum of completion of one year's continuous service would be enough or one should have been medically examined and found fit. The stand of the respondents that the applicant's wife had not completed 10 years service is misconceived and in this view of the matter the applicant would be entitled to family pension in accordance with the aforesaid rules.

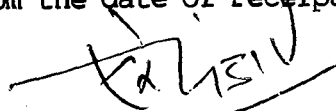
10. We have also perused the judgement, which has been cited by the learned counsel for the applicant and we find that the instant case stands on a better footing in as much as in the instant case, the applicant's wife was holding Group "D" post on a regular basis whereas in that case, the said Smt. Vallam Badia had been granted only temporary status. Thus on all counts the applicant is entitled for the grant of family pension.

11. Before parting with the case, we are constrained to observe that the

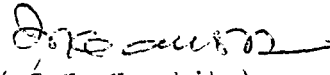


respondents have not taken judicial notice of the law for grant of family pension to the legal heirs of the deceased Government servant and have seriously failed to notice the difference between the family pension and the ordinary pension in as much as they are of the view that they cannot sanction family pension to the legal heirs of the deceased Government servant who had not completed 10 years qualifying service. Not only this they have raised frivolous preliminary objection regarding the non-availing of alternative remedy and the plea of law of limitation was also raised for the grant of family pension which is continuing cause of action. This is despite the fact that no statutory remedy is provided against against non-grant of pensionary benefits. This plea seems to have been taken just to justify the wrong stand of the respondents on one pretext or the other. The respondents instead of being sympathetic to the legal heirs of the deceased government servant, have unfairly dealt with the case of the applicant for grant of family pension.

12. The upshot of the aforesaid discussion is that the O.A has ample force and the same deserves to be allowed. The same is hereby allowed and the respondents are directed to grant family pension and other retiral benefits to the applicant as per rules in force. The due amounts of arrears shall be paid along with interest at the rate of 8% per annum. The respondents are saddled with cost of Rs.2000/- which shall be paid to the applicant by them and the same may be recovered from the erring officials. This order shall be complied within a period of three months from the date of receipt of a copy of this order.


(A.K. Bhandari)

Administrative Member.


(J.K. Kaushik)

Judicial Member.

jsv.