CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH : JAIPUR

Date of Order: 12.04.2004

Original Application No.536/2003.

Smt. Chanda Devi W/o Late Shri Nawal Singn, aged about 39 years R/o T/115D, Loco Colony, Jaipur.

... Applicant.

versus

- 1. The General Manager, North West Railway, G.M. Office, Near Jaipur RailwayStation, Jaipur.
- 2. The Divisional Railway Manager, North West Railway, D.R.M. Office, Jaipur.
- 3. The Sr. Divisional Mechanical Engineer, North West Railway, D.R.M. Office, Jaipur.
- 4. The Assistant Engineer, North West Railway, Phulera, Dist. Jaipur.
- 5. The Railway Track Inspector (R), North West Railway, Phulera Dist. Jaipur.

... Respondents.

Mr. P. K. Sharma counsel for the applicant. Mr. Tej Prakash Sharma counsel for the respondents.

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Hon'ble Mr. J. K. Kaushik, Judicial Member. HOn'ble Mr. M. K. Misra. Administrative Member. : O R D E R (ORAL):

This OA NO.536/2003 has been filed by Smt. Chanda Devi W/o Late Snri Nawal Singh and has prayed for the following reliefs:-

- (i) To consider the above named Snri Nawal Singh nusband of the Applicant as deemed confirmed employee from the date when his junior was regularized or from the date i.e. 23.10.1989 when he had completed 10 years of service from initial date of his appointment.
- (ii) to grant the applicant Family Pension from the date of the death of her above named husband Shri Nawal Singh i.e. 31.5.1990 with all consequential benefits including interest thereupon and fixation and revision which may have taken place from time to time.
- (iii) Any other order which this Hon'ble Tribunal deems just and proper and expedient in the facts and circumstances of the case may be passed; and
- (iv) Costs of the original application may be awarded in favour of the applicant."

- 2. The facts of the case are that the husband of the applicant Late Shri Nawal Singh was working as Substitute Labour in the erstwhile Western Railway since 24.11.1979 and was granted temporary status w.e.f. 05.11.1985. The juniors of Late Shri Nawal Singh were absorbed as regular employee, therefore, Late Shri Nawal Singh was presumed to have been regularised as a regular employee. The wife of the Late Shri Nawal Singh, the applicant in this case, appears to have sufficient reasons to believe that her husband was a regular employee in theWestern Railway because he was getting all the benefits such as regular pay scale, annual grade increment etc. Late Shri Nawal Singh died on 31.05.1990 and though he had completed more than 10 years of service the applicant Smt. Chanda Devi was given employment in the Western Railway on compassionate grounds being dependent of the deceased railway employee (i.e.her husband).
- 3. The claim of the applicant at present in this OA is that she is entitled to get family pension from the date of demise of her husband as per the provisions of Railway Service (Pension) Rules 1993. The respondent did not allow the claim of the applicant on the ground that the deceased husband Shri Nawal Singh was not a regular employee and he had not rendered more than 10 years of continuous service as a regular employee up to the date of the death i.e. 31.05.1990. Thus, the main bone of contention is whether the applicant is entitled to the benefit of family pension.

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The respondent in their reply have submitted that the deceased husband of the applicant was not engaged in any regular sanctioned post by the Railway. He was employed as a casual labour and was granted temporary status w.e.f. 05.12.1985 and expired on 31.05.1990. The Screening Committee did not consider the case of the deceased nusband for regular employment and ne could, therefore, not be treated as a regular employee. It was also alleged by the respondents that no junior to the deceased husband of the applicant was regularised on the respective post. As per the provisions of Railway Service (Pension) Rules 1993 are concerned, it is observed that they are not applicable in this case because the deceased employee was not the regular employee of the railways as he was never absorbed in the Railway Service. It was reiterated by the respondent that the OA has not been filed within the stipulated time as provided under the Central Administrative Tribunals Act, 1985 inasmuch as the deceased died on 31,05.1990 and the OA has been filed after a lapse of many years. M

- 5. About the belated OA, as alleged by the respondents, we are of the view that the matter relates to the grant of family pension and pension matter is a recurring cause of action. Therefore, the law of limitation is not attracted. Further we find that there are sufficent and good reasons for condonation of delay and the OA is allowed and we proceed to decide the matter on merits.
- 6. We have considered the rival averments of the learned counsel for both the parties. In this connection, the verdict of the Hon'ble Supreme Court of three Judges Bench in the case of Ram Kumar vs. Union of India, 1996 (1) SLJ 116 (SC), fully covers this issue and is applicable in this case. The Hon'ble Supreme Court in the above judgement also considered its own decision in the earlier case of Shri Ram Kumar vs. Union of India and Ors. AIR 1988 SC 390 and in the case of Union of India and Ors. vs. Rabia Bikaner and Ors. 1997 SCC (L&S) Both the above quoted cases were considered by the two judges Bench of the Supreme Court whereas the later decision in the case of Ram Kumar vs. Union of India 1996 (1) SLJ 116 (SC) was given by the three judges Bench of the Supreme Court. In this case, the HOn'ble Supreme Court held that the Railway casual worker attaining temporary status should be entitled for pensionary benefits as per orders issued by the Railway Board may be given that benefit. Learned counsel for the respondents in the above case also gave positive commitment to the Hon'ble Supreme Court that the directions of the Hon'ble Supreme Court would be complied with by the Railway Board in toto.
- Thus, it is observed that learned counsel for the respondents is taking support of the decision of Rabia's case (supra) is of no consequence in the light of the latest decision of the three Judges Bench of the Hon'ble Supreme Court in the case of Ram Kumar (supra). It is undisputed fact that the deceased husband of the applicant was It is also undisputed fact giving temporary status on 05.11.1985. that the deceased nusband of the applicant joined Western Railway on Accordingly, we are of the firm opinion that though an 24.11.1979. employee having temporary status who joined as casual labour earlier in the railway would be entitled to the pension in light of the commitment made by the learned counsel for the respondents before the Supreme Court in the case of Ram Kumar vs. Union of India (supra) and since once the normal pensionis allowed to a temporary status casual labourer, his widow would definately be entitled for family pension.

Similar view was expressed by the Ahmedabad Bench of the CAT in the case of Smt. Vallam Badia vs. Union of India & Ors., OA No.316/1996 with MA No. 333/1996 decided on 21.06.2002. It was neld therein that the temporary status casual labour is entitled to the pension from the railway department and in case of death of the employee, his widow shall get the family pension as per rules. This finding was affirmed by a Division Bench of Hon'ble the High Court of Gujarat in Special Leave Appeal Nos.12456/2003, 75/2003, 801/2003, 939/2003 and 622/2003; Union of India vs. Shanti Devi, Ramawat Jakri & Others decided on 21.7.2003.

Paying regard to the provisions and position of the law, the foregoing discussions made, the law laid down by the Apex Court and for the reasons recorded herein above we find merit in this O.A. and the same deserves to be accepted. The O.A. is allowed. The respondents are directed to settle family pension of the applicant within three months from the date of receipt of a copy of this order. In case the family pensions is not paid within three months the respondents shall be liable to pay interest at the rate of 8% per annum after expiry of the said period of three months. No order as to costs.

(M.K. MISRA)

MEMBER (A)

(J.K. KAUSHIK)

MEMEBR (J)