

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of Order: 21-04-04

OA No.604/2003

Smt. Usha Devi w/o Late Shri Chandu Lal aged about 38 years, working as peon in the office of Divisional Rail Manager, North Western Railway, Jaipur, r/o JS 10/A Railway Loco Colony, Jaipur.

.. Applicant

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Opposite Railway Hospital, Jaipur
2. The Divisional Rail Manager, North-Western Railway, Power House Road, Jaipur

.. Respondents

Mr. Nand Kishore, counsel for the applicant.

Mr. R.G.Gupta, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant is widow of late Shri Chandu Lal who was initial working as Substitute Group 'D' and was granted temporary status on 30.12.1980. Subsequently, in order to make regular appointment he was subjected to screening in May, 1986 and he was placed on panel approved in April, 86. He was also given appointment vide letter dated 5.5/6.86 (Ann.A1). In this letter it has been specifically stated that he is appointed in the scale of Rs. 196-232 at Rs. 196/- per month on temporary

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basis subject to conditions mentioned therein. It was further mentioned that in case the husband of the applicant was willing to accept the offer of appointment he should submit his original certificates within 10 days alongwith true copies of the original certificates. From the material placed on record, it is clear that pursuant to the offer of appointment the husband of the applicant was given appointment in Traffic Department at Achnera in Group 'D' category. Simultaneously, papers were sent to the District Magistrate, Agra for verifying the character antecedents of the husband of the applicant in August, 1986. Since the report was not received from the District Magistrate, Agra and the husband of the applicant died on 9.10.86, as such no formal order for regularising the services of the husband of the applicant was issued. It may also be added here that earlier the applicant also filed OA No.171/91 in this Tribunal which was decided on 10.11.93 and direction was given in that OA that the applicant's claim shall be examined in the light of the rules on the subject and if the applicant is entitled to family pension, the respondents should grant her in accordance with the rules. The applicant not satisfied with the order filed another OA No.135/2003 which was decided on 3.4.2003. In that OA, direction was given that the applicant shall make representation regarding family pension to the respondent. This Tribunal vide order dated 3.4.03 directed the applicant to file fresh representation to respondents No.1 and in that eventuality respondent No.1 was directed to ensure that the family pension is granted to the applicant alongwith arrears within one month from the date of receipt of her representation, if the applicant is entitled as per rules. It was further observed that in case the respondents feel that the applicant is not entitled for family pension, as per

rules, she shall give a reasoned order within the said period enclosing copy of rules whereby the applicant is not entitled for the said family pension. Pursuant to the directions given by this Tribunal in OA No.135/03, the respondents have passed impugned order dated 21.10.2003 (Ann.A2) thereby giving the following reasons for rejecting the claim of the applicant:-

"As per direction of the Hon'ble Court I have gone through the representation submitted by Smt. Usha Devi w/o Sh. Chandu Lal dt. 3.04.03 and other details placed before me as per directions of Hon'ble CAT, and have come to the conclusion that in terms of para 26 of Railway Pension Rules, 1993 the temporary status/substitute shall not be deemed to be a railway servant unless he is regularized in railway service. It is also clarified that temporary employee and employee with temporary status are two different terminologies. The family pension or the pension is payable to regular employee only. Sh. Chandu Lal though was taken on panel for Gr.D staff but was not regularized in the cadre on the division till date of death, so his wife has not been considered due for payment of family pension. Therefore, Smt. Usha Devi w/o late Sh. Chandu Lal who has already been given appointment on compassionate ground which is sufficient to cater basic requirement of the family of the deceased employee. The rule position does not permit to sanction family pension to an employee who has not been absorbed, so she can not be sanctioned family pension. The applicant may be informed accordingly."

It is this order, which is under challenge in this OA.

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2. Facts as stated above, are not disputed by the respondents. In the reply filed by the respondents, they have taken same stand which has been inticated in the impugned order, relevant portion of which has been reproduced hereinabove.

3. The applicant has filed rejoinder thereby reiterating the stand taken in the OA and pleaded that the husband of the applicant was not a temporary status holder/substitute. The husband of the applicant appeared in the screening at Sl.No.79. The respondents have not denied that Shri Chandu Lal was offered appointment vide their letter dated 6.6.1986 (Ann.A1). The applicant has also annexed copy of the judgment rendered by the Principal Bench, New Delhi in the case of Smt. Meena Devi vs. UOI and ors., 2004 (1) 556 as Ann.A7 in support of her contention that the family pension is admissible in the case of casual labour, which has been screened and empanelled and appointed to the post, even if, he has not joined the post.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 The fact that the husband of the applicant was initially granted temporary stauts as Group 'D' employee on 30.12.80 is not disputed. It is also not in dispute that the applicant was subjected to screening in May, 1986 and he was also placed on panel approved in 1986. He was also given offer of appointment vide letter dated 6.6.86 (Ann.A1). Pursuant to offer of appointment, the applicant was given appointment in Traffic Department at Achnera in Group 'D' category. This fact has not been controverted by the respondents in their reply.

It is also admitted fact that papers for verifying character antecedents of late Shri Chandu Lal was forwarded to District Magistrate, Agra in August, 86, but the same was not received till 9.10.86, when the said Shri Chandu Lal expired. Therefore, formal order of regularisation of service in Group 'D' category before the date of death was not issued. These facts can be borne out from the impugned order Ann.A2 dated 21.10.2003.

4.2 Thus, from the facts as stated above, it is clear that the respondents took steps for the purpose of absorption of the applicant and other persons against Group 'D' posts in regular railways service and for that purpose a selection was held. It is also admitted fact that pursuant to said selection, the name of late Shri Chandu Lal was kept in panel and he was also given offer of appointment vide letter dated 6.6.86 (Ann.A1) on temporary basis in the pay scale of Rs. 196-232 on the conditions mentioned therein. Pursuant to the offer of appointment issued vide letter dated 6.6.86, the applicant joined in Traffic Department at Achnera in Group 'D' category and he continued in that capacity till he expired on 9.10.86. Since the report regarding verification of character antecedents of late Shri Chandu Lal was not received from the District Magistrate, Agra, as such no formal order of regularisation of his services in Group 'D' post could ~~not~~ be issued before the death of husband of the applicant. Thus, the question which requires <sup>my</sup> consideration is whether in these facts and circumstances as mentioned above, the applicant could be denied benefit of family pension and the reason given by the respondents for rejecting the claim of the applicant vide letter dated 21.10.03 (Ann.A2), as reproduced in earlier part of the judgment, can be legally sustained. The respondents have quoted Para 26 of Railway Pension Rules, 1993

*leg.*

to defeat the claim of the applicant for the purpose of family pension and it has been stated that the temporary employee and employee with temporary status are two different terminologies. The family pension or the pension is payable to regular employees only. Shri Chandu Lal though was taken on panel of Group 'D' staff but he was not regularised in that cadre. As such, his wife is not entitled for family pension. In fact the reference to ~~Rule~~ 26 of the Railway Pension Rules, 1993 has been <sup>Wrongly</sup> made, but the reason given by the respondents for rejecting the claim of the applicant appears to have been made by relying Rule 3(26) which is in the following terms:-

"substitute means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service."

According to me, the respondents have wrongly relied upon this rule while rejecting the claim of the applicant. At this stage, it will be relevant to notice few provisions of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as Pension Rules) which has been issued by the President in exercise of the powers conferred by proviso to Article 309 of the Constitution. Rule 2 states that "save as otherwise expressly provided in these rules, these rules shall apply to the railway servants mentioned therein". Railway servant has been defined under Rule 3(23) to mean a person who is member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding a post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour. Thus, from conjoint reading of Rule 2

and 3(23), it is clear that the deceased was a railway servant within the meaning of Rule 3(23) inasmuch as once he was empanelled after holding selection and he was also given offer of appointment vide letter dated 6.6.86 in regular pay scale of Rs. 196-232, though on temporary basis, and pursuant to such offer of appointment he joined against Group 'D' post and was posted in Traffic Department at Achnera, he attained the status of 'railway servant' within the meaning of Rule 3(23) and by virtue of Rule 2~~.....~~ Pension Rules are applicable to him being a 'railway servant'. Thus, it cannot be said that the deceased was still a casual labour/substitute and not a regular railway servant.

4.3 At this stage, it will also be useful to take note of Rule 75 wherein provision for family pension scheme for railway servants has been incorporated. The provision of this Rule has been inter-alia made applicable to a railway servant entering in a pensionable establishment on or after 1st January, 1964. Sub Rule (2) of Rule 75 so far as it is relevant is in following terms:-

"(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies :-

(a) after completion of one year 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).....

The family of the deceased shall be entitled to a family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below:-

....."

There is also explanation below this Sub rule which is in the following terms:-

"EXPLANATION: The expression "continuous one year of service" wherever it occurs in this rule shall be construed to include "less than one year of continuous service" as defined in clause (b)".

Thus from reading of clause (a) of Sub rule (2) of Rule 75 read with explanation appended below Sub-rule (2), it is clear that in case a railway servant who dies after putting less than one year of continuous service, the family of such employee shall be entitled to family pension. The respondents have failed to take note of this provision which was applicable in the instant case and has wrongly relied upon Rule 3(26) which is not attracted in the instant case so as to reject the claim of the applicant for grant of family pension.

4.4 Yet for another reason, the applicant is entitled to relief even under clause (b) of Sub-rule (2) of Rule 75. As already stated above, the Pension Rules have been made applicable to railway servants as mentioned in Rule 2 and in the opening part of this Rule 2, it has also been provided that these rules can also be made applicable to persons other than railway servants if some express provision has been made to that effect in the rules. As can be seen from clause (b) of Sub-rule (2) of Rule 75, it has been provided that family pension can be provided to the family of the deceased person even if he dies prior to his appointment to service or post (even if he is not a railway servant as defined under Rule 3(23)) provided such person has been examined by the appropriate medical authority and declared fit for railway service. Drawing assistance from this provision, the applicant is also entitled to family pension under this rule also. In fact, the case of the applicant is on better footing. Admittedly, the husband of the applicant was selected in Group

'D' category for the purpose of absorption in regular service and he was also offered appointment against Group 'D' post which offer was accepted by him and pursuant to that offer he joined the post and posted in Traffic Department at Achnera. Thus for all intents and purposes, the husband of the applicant was railway servant within the meaning of Rule 3(23) as before his death he was a member of the railway service and was holding a post under administrative control of the Railway Board. It is rather insignificant and is of no consequence if the formal order of regularisation of the husband of the applicant, if at all it was required was not issued by the railway authorities, for which the deceased railway servant/his family members cannot be blamed. In case the reason given by the respondents in the impugned order for rejecting the claim of the applicant for grant of family pension is accepted, it will defeat the very purpose for which the provision has been inserted in Sub-rule (2) of Rule 75 for extending family pension benefit to the family of a deceased railway servant. Further, the Principal Bench in the case of Smt. Meera Devi vs. UOI, 2004 (1) ATJ 556 has held that where casual labour has been screened, empanelled and could not join due to severe illness, his family is entitled to family pension. The ratio laid down in this case is also attracted in the instant case.

5. For the reasons stated above, the present application is allowed. The impugned order dated 21.10.2003 (Ann.A2) is hereby quashed and set-aside. The respondents are directed to accord the family pension to the applicant from due date and with all consequential benefits within 3 months from the date of receipt of a copy of this order. No costs.

  
(M.L.CHAUHAN)

Member (J)