

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Pre-delivery order in O.A.No. 758 of 1998

is sent herewith for consideration pl.


(D.C.Verma)
Vice Chairman(J)

Hon'ble Shri Anand Kumar Bhatt, Administrative Member-

I agree
Shri J
5/7

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. No. 758 of 1998

DATE OF DECISION 09. July 03

Smt. Biwa Rani Das APPLICANT(S)

Mr. S. Paul Advocate for the Applicant(s)

VERSUS

UOI & Ors. RESPONDENTS

Mr. M.N. Banerjee Advocate for Respondents

CORAM :

Hon'ble Shri D.C.Verma - Vice Chairman (Judicial)

Hon'ble Shri Anand Kumar Bhatt - Administrative Member

1. Whether Reporters of local papers may be allowed to see the judgments ? - ~~YES~~/NO
2. To be referred to the Reporter or not ? YES/~~NO~~
3. Whether their Lordships wish to see the fair copy of the judgment ? - ~~YES~~/NO
4. Whether it needs to be sent to the Principal Bench for circulation to other Benches of the Tribunal ? - YES/~~NO~~

(D.C.Verma)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH, JABALPUR


OA. No. 758 of 1998

Jabalpur, this the 09th July 2003

Hon'ble Mr. D.C.Verma, Vice Chairman (J)
Hon'ble Mr. A.K.Bhatt, Member (A)

Smt. Biwa Rani Das
Wife of late Shri Abani Kanti Das,
Retired Cheif T.N.C.
Southern Eastern Railway
Resident of M/s.Bhilai Cycle Stores,
Behind UCO Bank, Charoda,
Post B.M.Y.,
Charoda, District Durg (M.P) Applicant
(Advocate : Mr. S. Paul)

VERSUS


1. Union of India
through the Secretary,
Ministry of Railways
Railway Board,
New Delhi.
 2. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.
 3. The Senior Divisional Railway Manager,
South Eastern Railway,
Bilaspur (M.P)
 4. The Senior Divisional Accounts Officer,
South Eastern Railway,
Bilaspur (M.P). Respondents
- (Advocate : Mr. M.N.Banerjee)
- 

O R D E R

PER : Hon'ble Mr. D.C. Verma, Vice Chairman (J)

By this O.A., the applicant who is widow of late Abani Kanti Das, (retired as Chief T.N.C) has prayed for a direction to the respondents to fix the retiral dues of the applicant by treating the date of superannuation of her late husband as 12-1-1985 and the same be paid along with the arrears and interest thereon. Pension, gratuity leave encashment etc. also be granted by refixing.


2. The brief fact of the case is that late Abani Kanti Das was in service of the respondents and continued to work as Chief T.N.C upto 10-4-85. After notice, he was retired on that day as it had been informed that the date of birth of the applicant was 16-11-1923. The facts reveal that after retirement, the employee died after some time. The ^{actual} ~~real~~ date of death of the employee is not on record. However, the widow of late employee, i.e. the present applicant, filed OA No.426/92 for grant of terminal benefits after refixation of family pension, leave encashment etc, as the date of birth of late employee was recorded as 01-6-1927. The claim was, however, made for retiral benefits on the average of last pay as on 31-5-85. The Tribunal, directed the respondents to decide the question within a period of three months and thereafter, in case of change of date of birth, to refix the pension etc. and pay the same. The OA was decided by an order



dated 08-08-97. Subsequent, thereto, the respondents passed an order dated 24-10-97 (Annexure A-2), impugned in the present OA, which was communicated to the applicant alongwith the Annexure A-1. In Annexure A-2, the respondents have mentioned that late A.K.Das was initially appointed on 1-6-1945 in Bengal Nagpur Rly (B.N.Rly) and date of birth was recorded as 16-11-1923. The late employee himself had filed up the form in his own handwriting and signed the same. On this basis, the retiral benefits was calculated from the date of superannuation i.e. 30-11-1981 and not after adding the period from period from 1-12-1981 to 10-4-1985.

3. The grievance of the applicant is that his pension benefits be calculated as on 10-4-85 i.e the date on which the late employee was actually retired and not as on 30-11-1981 on which the applicant was to retire. During the course of arguments, the learned counsel for the applicant has limited his relief to the above grievance only.

4. The learned counsel for the respondents, on the other hand, submitted that as per the recorded date of birth, i.e. 16-11-1923, the applicant was to superannuate on 30-11-1981. Consequently, the retiral benefits can be on the 10 months' average pay as drawn on 30-11-81. The submission is that the period on which the applicant served after 30-11-1981 has been treated as re-employed and such period cannot be counted for purpose of grant of pensionary benefits.




5. Learned counsel for the applicant has placed reliance on the decision of CAT, Chandigarh in the case of Tulsi Ram V/s. Executive Engineer, CPWD, Simla reported in 1989 10 ATC Page 199 and has submitted that if due to department's wrong assumption regarding due date of superannuation, the applicant was working till 10-4-1985, the pensionary benefits should be counted on the basis of salary last drawn by the late employee on 10-4-1985 and not on the basis of salary drawn on the due date of superannuation i.e. 30-11-1981.

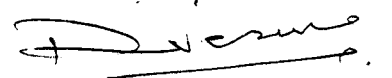
6. We do not find any merit in the submissions made on behalf of the applicant as the issue now rest decided by a decision of Apex Court in the case of Radha Kishun v/s. U.O.I & Ors. reported in 1997 (2) SLR page 148. In the cited case, the applicant was to superannuate on 31-5-1991. Instead of, he remained in service till 31-5-1994. When the action was taken to recover the amounts paid to him for the period beyond the date, he was to retire, viz 31-5-1991, The plea, as taken in the present case that the applicant is entitled to pension and other benefits from 10-4-1985 and not from 30-11-1981, was also taken before the Apex Court. The Apex Court observed as below :

" The learned counsel for the petitioner contends that since the petitioner has worked during the period, he is entitled to the payment of the pay and allowances from 1-6-1991 to 26-6-1994 and that he is also entitled to the payment of Provisional Pension, Death-cum-retirement gratuity, leave encashment, commutation of pension amount, GPF money and the amount deposited under CGHS on the plea that he retired from service on May 31, 1994. We are aghast to notice the boldness with which it is claimed that he is entitled to all the benefits with effect from the abovesaid date when admittedly he was

he was to retire on May 31, 1991. It would be an obvious case of absolute irresponsibility on the part of the officer concerned in the Establishment in the concerned section for not taking any action to have the petitioner retired from service on his attaining superannuation. It is true that the petitioner worked during that period, but when he is not to continue to be in service as per law, he has no right to claim the salary etc. It is not the case that he was re-employed in the public interest after attaining superannuation. Under the circumstances, we do not find any illegality in the action taken by the authorities in refusing to grant the benefits.

7. In the case in hand, we find that as per the impugned order dated 24-10-97, the Railway Board has already decided to treat the period between 1-12-1981 to 10-4-1985 as re-employment and all the settlements dues upto the date of superannuation i.e. 30-11-1981 has already been paid to the late employe A.K.Das. The department has already not taken an action to make recovery for the amount paid between 1-12-1981 to 10-4-85 and has regularised the same by treating as re-employed.
8. The applicant has been already benefitted by order of the Railway Board as her husband was treated as re-employed. The pensionary benefit can be only from the date of superannuation as on 30-11-2001. It cannot be after adding the period upto 10-4-85.
9. In view of the discussion made above, the relief claimed in the OA cannot be granted. The OA is found without merit and the same is dismissed. Cost easy.


(A.K. Bhatt)
Member (A)


(D.C. Verma)
Vice Chairman (J)

Forward
10/7/03

प्राधान्य सं जो/न्या.....जबलपुर. दि.....
पसिलिपि अन्वेषित:-

- (1) सदित, जबलपुर न्याय न्याय एसेन्सियल, जबलपुर
- (2) अध्यक्ष, पी. सी. न्याय, जबलपुर के काउंसल
- (3) प्रत्यक्ष, पी. सी. न्याय, जबलपुर के काउंसल
- (4) अध्यक्ष, पी. सी. न्याय, जबलपुर न्यायपीठ

S. Pauli AC
M. N. Banerji AC

सूचना एवं आवश्यक कार्यवाही हेतु

उप राजस्वर