

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Jaipur, the 18th day of January, 2006

ORIGINAL APPLICATION NO. 238/2005

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN

Smt. Punjoli Nadeson wife of Late Shri Dhanpal Chintambi Kawander ,
aged 48 years, presently working as Khallasi under Sr. Sectional
Engineer North Western Railway, Phulera, residing in Railway Quarter
No. M/102 E, Railway Colony, Near Railway Hospital, Phulera.

....Applicant

By Advocate: Nand Kishore

VERSUS

1 Union of India through General Manager, North Western
Railway, Hasanpura Road, Jaipur.

2 Chief Administrative Officer (Construction), North Western
Railway, Hasanpura Road, Jaipur.

3 Divisional Rail Manager, Western Railway, Kothi Compound,
Rajkot.

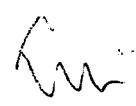
4 Dy. Chief Engineer (Construction) North Western Railway,
Ajmer.

....Respondents

By Advocates: Mr. Shailesh Sharma (Respondents Nos. 1,2& 4)
Mr. Tej Prakash Sharma (Respondent No. 3)

ORDER (ORAL)

This OA has been filed by the applicant seeking family pension.
The facts as alleged by the applicant are that the husband of the
applicant, Shri Dhanpal Chintambi Kawander, was appointed in the year



1979 and he worked in various places under the Railways in Construction Department. The applicant was granted temporary status w.e.f. 01.01.1983 in terms of Railway Board's letter at Annexure A/1. His lien was maintained by Rajkot Division of the Western Railways. The applicant has also placed on record the seniority list in which his name stood at sl. No. 45, appointed as Khallasi and posted in Rajkot Division. It was further submitted that the husband of the applicant was working at Someshwar Station in Ajmer Division of Western Railway who was deputed to Bombay Central Division alongwith other employees. The husband of the applicant met with an accident on 18.11.1997 while working on duty. It was further stated that respondents Railway arranged the payment of Rs.24,668/- to the applicant vide Cheque No. 255840 dated 12.4.1999. Now the applicant represented for payment of DCRG and family pension vide Annexure A/6 but nothing has been paid to her. The applicant further submits that by virtue of Rule 18(3) read with Rule 75 of the Railway Service Pension Rules, 1993, she is entitled for grant of family pension. She has prayed that appropriate directions be issued to the respondents for arranging the payment of family pension to her w.e.f. 28.1.1998, the date of her husband expired while on duty.

2 The respondents are contesting the OA. Initially one reply was filed on behalf of the respondents showing that it was the reply on behalf of all the respondents but subsequently another reply was filed. It was clarified that Mr. Shailesh Sharma, Advocate, is appearing on behalf of respondents nos. 1,2 and 4 and Mr. Tej Prakash Sharma, Advocate, is appearing on behalf of respondent No. 3 and, therefore, they have filed separate reply. Respondent No. 3 is Divisional Rail Manager, Western Railway, Rajkot whereas other respondents are from Jaipur and Ajmer. The respondents in their reply did not deny the facts that the husband of the applicant worked with the Railways under Rajkot Division but reply

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filed by Mr. Tej Prakash Sharma, counsel for respondent No. 3, suggest that he has to seek comments from respondents nos. 2 and 4 as the service particulars of the husband of the applicant are available only with Respondent Nos. 2 & 4 whereas respondents nos. 2 & 4 in their reply submitted through Mr. Shailesh Sharma that husband of the applicant was conferred temporary status vide Memorandum dated 28.5.1985 issued from the Office of Executive Engineer (Construction) Jam Nagar, Western Railway and the case of the applicant does not pertain to their Division.

3 Thus on facts the case of the applicant was not contested at all nor it was denied that the deceased was not an employee of the Railways. On the contrary, the documents submitted by the applicant as annexed with the OA go to show that husband of the applicant was initially appointed under the Construction Department and was subsequently was regularized as per the Scheme and was appointed as Khallasi and stood at Sl. No. 45 in the seniority list vide letter dated 18.3.1998 at Annexure A/2 and his lien was maintained by Rajkot Division of the Railways i.e. by Respondent No. 3. It is also a fact that a payment of Rs.24,668/- for settlement of dues was given to the applicant vide Cheque No. 255840 dated 12.4.1999 but no pension was settled so far. The Death Certificate shows that the husband of the applicant at the time of death was working at Someshar Railway Station. The relevant rule pertaining to grant of family pension i.e. Rule 18(3) readwith Rule 75 of Railway Services Pension Rules 1993 are reproduced hereinbelow:-

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"18. Pensionary Terminal or death benefits to temporary Railway Servants:

(3) In the event of death or harness of a temporary Railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families to permanent railway servants under these rules.

75 Family Pension Scheme for Railway Servants 1964

"(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."

4 The perusal of these rules shows that the deceased employee is entitled for family pension as well as for Death Crum Retirement Gratuity i.e. DCRG. The Rule 75 shows that even after completion of one year continuous service, the family is entitled to get family pension but no reasons has been given in any of the reply as to why family pension has not been given to the applicant. Learned counsel for respondent No. 3, however, submitted that since no representation was made by the applicant for grant of family pension so family pension was not granted to her but this fact is belied by the letter written by Respondent No. 3 to Respondents nos. 2 & 4 as respondent No. 3 had initiated the process for settling the claim of pension of the applicant and respondents nos. 2 & 4 were asked to furnish some information so that the case of the applicant can be finalized. It appears that respondents nos. 2 & 4 did not reply to the letter of respondent No. 3 which shows

negligence on the part of respondents nos. 2 & 4 itself and the case remained pending and the poor applicant was compelled to come to the court for seeking family pension.

5 In view of these circumstances, I find that as per Rule 18(3) and Rule 75 of Family Pension Scheme for Railway Servants, the applicant is entitled to get family pension as the applicant's husband had worked under the Railways initially as Casual Labourer under the Construction Wing and was conferred with temporary status w.e.f. 01.01.1985 vide letter dated 28.5.1985 (Annexure A/1) and subsequently he was regularized and ultimately died on 28.01.1998 while working on duty. Thus the applicant is entitled to get family pension as per the rules.

6 In view of these circumstances, I find that the OA deserves to be allowed and the respondents are directed to finalize her case and pay her family pension as per rules & instructions on the subject ^{her} it has fallen due and since the delay has been caused by the respondents on account of their own negligence/failure, the applicant is also entitled to the interest @ 9% per annum on the arrears of pension till the date of actual payment is made to her. These directions should be complied with within a period of three months from the date of receipt of a copy of this order.


(KULDIP SINGH)
VICE CHAIRMAN

AHQ

Copy given Vide Sl No 43844

Dtd 25-1-06 & 27-1-06

A-3 Vide Mu A; Dtd 5/2/06

THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET

APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

8.8.2006


MA 171/2006 in OA 238/2005

None present for applicant.
Mr.S.R.Samota, proxy counsel for
Mr.T.P.Sharma , Counsel for respondents.

The respondents have moved this MA thereby praying for extension of time to comply the order dated 18.1.2006, passed in OA 238/2005. Copy of this MA has been served upon the learned counsel for the applicant in the OA.

In view of the reasons stated in this MA, this MA is partly allowed and the respondents are granted three months's further time to comply the order in question. It may also be stated here that as per the order passed in the aforesaid OA the applicant has been held entitled to the interest @ 9% per annum on the arrears of pension till the date of actual payment. Thus, it may be in the public interest that the claim of the original applicant for grant of family pension is expedited by the respondents/present applicants in this MA.

This MA shall stands disposed of accordingly.


(M.L. CHAUHAN)
MEMBER (J)

*G.P.S. sent
vide no.
443 & 444.
11-8-06*