

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.35 of 2005

November 17, 2005.

Smt. Uchhav Kanwar wife of Late Shri Hari Singh, Gangman, aged about 45 years, resident of Nimka Kheda, Post Dhuwala, Tehsil Mandal, District Bhilwara (Rajasthan).

Applicant

By : Mr.Nand Kishore, Advocate.

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Chief Administrative Officer (Construction Unit), North Western Railway, Hasanpura Road, Jaipur.
3. Dy. Chief Engineer (Construction), North Western Railway, Ajmer.

Respondents

By : Mr.S.S.Hassan, Advocate.

O R D E R (ORAL)

KULDIP SINGH, VC

The applicant who is widow of late Shri Hari Singh is aggrieved of the fact that she has not been paid family pension despite being eligible for the same and as such she has filed the present O.A.

Facts in brief as alleged by the applicant are that her husband was initially appointed on 25.9.1986 and was granted temporary status on 26.9.1987. It is further stated that at the time of initial appointment he was medically examined and found fit in such medical examination, which had taken place on 25.12.1987. The husband of the applicant has expired on 6.7.1997 due to sickness. Since husband of the applicant was

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regularized by the respondents along with other casual labourers vide letter-dated 4.9.1997, after his death. This order of regularization has been issued under a Scheme issued by the Railways for regularization of about 56,000 casual labourers on roll as on 30.4.1996. Copy of the Scheme is enclosed as Annexure A-5. The applicant is stated to have represented for grant of family pension as her husband had worked for more than 3095 days and he had died in harness and applicant and further para 75 of Railway Services (Pension) Rules, 1993, prescribes that family pension is permissible to the family of a railway employee after completion of one year of continuous service. It is further stated that the case of the applicant is also covered by the various decisions given by this Court earlier as well as by the Hon'ble Supreme Court. So, the respondents should be directed to allow the applicant family pension etc.

Respondents are contesting the O.A. by filing a detailed reply. They plead that though order of regularization of the applicant was issued but it was a conditional order which prescribed that before regularization the applicant had to undergo medical examination and since the applicant had died before the passing of the regularization order, no medical examination could be conducted so, the applicant had not been regularized since the condition had not been fulfilled by him and as such the family pension is not admissible to the applicant.

I have heard the learned counsel for the parties and perused the material on the file.

Learned counsel for the applicant has referred to various decisions one of such decision is given by this Bench in the case

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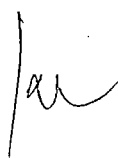
of Kajori Devi Vs. Union of India, 2004 (3) ATJ, Page 63,

wherein it has been held that the condition of fulfillment of one year's service after regularization has been deleted by the latest amendment and the applicant is entitled to the family pension. In the said case also the applicant's husband had been regularized on 2.6.1994 whereas he had died on 29.4.1994, within two months prior to the regularization. The condition of medical examination could not be completed therein also. Learned counsel then relied upon a judgement given by the Hyderabad Bench in O.A.No.22 of 2003 decided on 16.7.2004 titled Smt. A. Lakshmi Bai Vs. Union of India & Others, reported as 2004 (3) ATJ, Page 350, wherein the concerned employee had been approved for temporary status. However, there was delay in granting temporary status. Consequently the process of regularization was delayed and in between employee had died. Thus, denial of family pension on the ground that employee was not regularized before his death was held to be not justified and claim for family pension was allowed.

On the similar lines there is another judgement given by the Principal Bench of Central Administrative Tribunal, New Delhi, titled Smt. Meena Devi Vs. Union of India & Others, reported as 2004 (1) ATJ, page 556, wherein the applicant's husband had worked since 1977 on casual basis. He was screened, empanelled and imparted training and was subsequently appointed and was posted. However, he could not join due to severe illness died and the department had rejected the family pension. Rejecting the stand of department, the claim of the widow for family pension was allowed holding that grant of

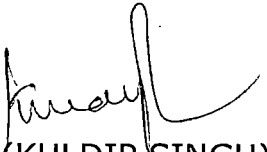
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family pension is a beneficial legislation and while interpreting rules the claim cannot be thrown out on mere technicality. Equitable consideration is part of rule of law and is an inbuilt object sought to be achieved and the goal laid down in the Constitution of India. Placing reliance on this decision learned counsel for the applicant submitted that the condition of medical examination cannot be insisted upon for the applicant and since the applicant had been working since 1986 as casual labour and he had been regularized vide orders dated 4.9.1997, though in the mean time he died while in harness, so condition for second medical examination at the time of regularization cannot be insisted upon and applicant is entitled to family pension. In reply to this learned counsel for the respondents submitted that as far as the decision given by the Hyderabad Bench is concerned, a writ petition has been filed and the same has been stayed. Besides, learned counsel for the applicant referred to a judgement in the case of Rabia Bikaner Vs. Union of India etc. given by the Supreme Court reported as 1997(6) SCC 581. Placing reliance on the judgement in the case of Rabia Bikaner (supra), learned counsel for the respondents submitted that till an employee is regularized, the family pension cannot be allowed as per the Railway Pension Rules. However, from the perusal of the judgement given by the Principal Bench in the case of Smt. Meena Devi (supra), I find that this judgement of Rabia Bikaner (supra) has been distinguished. Even otherwise I find that decision in the case of Rabia Bikaner (supra) was given based on view taken in the case of Ram Kumar Vs. Union of India & Others and the said decision in the case of Ram Kumar (supra)



has been reviewed by the Hon'ble Supreme Court itself. So, the decision in the case of Rabia Bikaner (supra) cannot be applied to the facts of the present case and as per the latest decision of the Principal Bench in the case of Smt. Meena Devi (supra), in which also the applicant could not join his duties due to severe illness and ultimately died before joining his duties. The Court had allowed the claim of the applicant for family pension. In this case case also I find that the applicant had worked in the railways since 1986 on casual basis and his juniors had also been regularized along with him so his family cannot be denied family pension. Moreover, I find that the applicant's husband in this case had been medically examined by the Divisional Medical Officer, Chittorgarh and was found fit, vide medical certificate dated 25.12.1987 which fact stands admitted by the respondents in their reply. Had the applicant not been medically examined earlier, one could have understood the logic behind insisting upon requirement of medical examination. Thus, the claim of the applicant has to be allowed. It is accordingly allowed.

The respondents are directed to release the family pension to the applicant from due date in accordance with the rules within a period of 3 months from the date of receipt of copy of this order.


(KULDIP SINGH)
Vice Chairman

November 17, 2005.

HC*