

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(M)

ORDERS OF THE BENCH

25.08.2011

OA No. 241/2010

Mr. Harsh Kulshrestha, Counsel for applicant.
Mr. B.K. Pareek, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents.

On the request of the proxy counsel appearing on behalf of the applicant, put up for hearing on 01.09.2011.

K. S. Rathore
(Justice K.S. Rathore)
MEMBER (J)

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From

to 1-9-2011
Mr. Harsh Kulshrestha, Counsel for applicant
Mr. B.K. Pareek, Proxy counsel for
Mr. T.P. Sharma, Counsel for respondents

Heard. The OA is disposed of by a
separate order.

Anil Kumar
(Anil Kumar)
M (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 1st day of September, 2011

ORIGINAL APPLICATION No. 241/2010

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Smt. Jamna Bai wife of Shri Dhannalal Mehar, aged 67 years, resident of Tang Talab, Nai Basti, Kota Junction, Kota.

... Applicant
(By Advocate : Mr. Harsh Kulshrestha)

Versus

1. Union of India through General Manager, Western Central Railway, Jabalpur (M.P.).
2. Deputy General Manager, Western Central Railway, Kota.
3. Rail Path Nirikshak/ Permanent Wage Inspector, Western Central Railway, Ramganj Mandi, Kota.

... Respondents

(By Advocate: Mr. B.K. Pareek proxy counsel to
Mr. T.P. Sharma)

ORDER (ORAL)

The applicant has filed this OA praying for the following relief:

- i) By an appropriate order or direction the respondents be directed to provide family pension/ pension and other admissible benefits to the applicant on account of the death of her husband, Late Shri Dhannalal Mehar, Gangman, Western Railway, Rail Path Nirikshak, Ramganj Mandi.
- ii) By an appropriate order or direction the respondents be directed to provide interest at the rate of 18% on the pension amount w.e.f. 15.7.1972.
- iii) By an appropriate order or direction, the respondents be directed to give applicant cost of Rs.75,000/- and suitable damages for mental harassment and torture suffered by the applicant in the last 10 years.
- iv) Any just and proper relief be awarded in favour of the applicant."

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2. The applicant had stated that her husband, Shri Dhannalal Mehar, was working as a Gangman under respondent no. 3. He was a permanent employee. On 15.07.1972, when Shri Dhannalal Mehar was on duty, he met with an accident and died. Shri Dhannalal Mehar's salary at that time was Rs.100/-.

3. That the applicant approached the respondents for providing her pension but when no action was taken, she ultimately filed a Civil Suit No. 87/94, which was disposed on 14.11.2000 and the applicant was given opportunity to approach the Hon'ble Tribunal. The OA No. 201/2001 filed before the Tribunal was dismissed on 22.05.2001 and DB Civil Writ Petition No. 100/2001 was filed before Hon'ble High Court and vide judgment dated 08.12.2009; the case has been remanded back to this Hon'ble Tribunal.

4. The applicant is seriously aggrieved by the inaction of the respondents in not providing her pensionary benefits, the applicant being a widow of Shri Dhannalal Mehar has got every right to receive the pension. There is no justification on the part of the respondents in depriving the applicant from pensionary benefits after the death of her husband, Late Shri Dhannalal Mehar. Therefore, the applicant be given pension with effect from 15.07.1972 alongwith interest @ 18% per annum.

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5. The respondents have filed their reply. The respondents besides raising other objections have raised preliminary objections regarding maintainability of this OA. The respondents have stated that the applicant has filed second OA whereas earlier OA No. 201/2001 filed by the applicant was dismissed vide order dated 22.05.2001 and against this order, the applicant availed legal remedy by filing DB Civil Writ Petition, which was also decided by remanding back the matter to the Tribunal and the matter was again heard and disposed of. Hence the same issue involving in the present case has already been adjudicated by the court of law. Therefore, the second OA is not maintainable and deserves to be dismissed.

6. The second preliminary objection of the respondents is that the present OA is not maintainable and deserves to be dismissed as the OA has been filed at a belated stage. The law does not permit to get the relief even after expiry of the prescribed limitation in view of the following judgments of the Hon'ble Supreme court and the OA deserves to be dismissed:-

- (i) G.S. Rathore vs. State of M.P.
- (ii) U.T. Daman & Dev & Others vs. R.K.B. Valand
- (iii) Ramesh Chandra Sharma vs. Uday Singh Kamal

7. While replying to the OA, the respondents have stated that Late Shri Dhannalal Mehar was working as a substitute

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Gangman and died his natural death on 15.07.1972 and they have denied that he died while on duty. Shri Dhannalal was engaged only as a substitute Gangman and thus the question of his being a permanent employee does not arise. The said Shri Dhannalal had not even worked for a period required to get pensionary benefits. Rather being a substitute Gangman, he was purely temporary otherwise also not entitled for pensionary benefits, which include family pension. The Tribunal had rightly rejected the earlier OA as being time barred and otherwise also, the petitioner is not entitled for family pension. The OA has no merit and, therefore, it may be dismissed.

8. The applicant has filed rejoinder stating that pension is a continuing grant and statutory provisions in such circumstances need to be overlooked as held by the Hon'ble Supreme Court in the case titled Union of India vs. Tarsem Singh, reported in 2008(8) SCC 648. The case of the applicant being squarely covered by the case of Tarsem, the DB of the Hon'ble High Court remitted back the case vide order dated 08.12.2009 with the direction to hear and decide the matter on merits within a reasonable time. The applicant has further stated that where the issue relates to payment of pension, it does not affect the rights of third person. Moreover, the case has been remitted and, therefore, the OA is not time barred. The applicant has further stated that it is wholly wrong on the part of the respondents to state that Shri Dhannalal was working as a substantive Gangman. Shri

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Dhannalal was employed as a Gangman under Respondent no. 3. On 15.07.1972, when Shri Dhannalal was on duty, he met with an accident and died. He was appointed on 04.12.1960 and at the time of death, his salary was more than Rs.100/. The applicant has submitted the Photostat copies of the statement of State Railway Provident Institution accounts as Annexure No. 8 and the certificate issued by Rail Path Nirikshak, Ramganj Mandi regarding cause of death and work details of deceased Shri Dhannalal Mehar as Annexure 9. The bare perusal of above documents clearly shows that the appointment of deceased Dhannalal Mehar was of permanent nature. Therefore, the applicant is entitled for pensionary benefits which include family pensionary. The applicant has stated that the respondents have not been in a position to show that the applicant is not entitled to pensionary benefits, therefore, the OA may be allowed.

9. Heard learned counsel for the parties and perused the documents on record. The respondents have raised preliminary objection regarding maintainability of this OA on the ground that the applicant had already availed the legal remedy available to her and, therefore, this second OA is not maintainable. In this regard, it may be stated that OA No. 201/2001 filed by the applicant was dismissed on the ground of limitation vide order dated 22.05.2001 (Annexure A/5). The applicant challenged that order by filing DB Civil Writ Petition No. 100/2002, which was decided by the Hon'ble High Court on 08.12.2009. The Hon'ble High Court allowed the writ

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petition and set aside the order of the Tribunal and the case was remanded back to the Tribunal with the direction to hear and decide the matter within a reasonable time. The order of the Tribunal dated 08.04.2010 (Annexure A/7), which categorically states as under:-

This case has been remitted back by the Hon'ble High Court of Rajasthan vide order dated 8.12.2009 with a direction to hear the matter on merits. Initially, the OA was disposed of by this Tribunal on 22.5.2001 on the ground of limitation. Since this case has been remitted back by the Hon'ble High Court after a lapse of about 8 and half years, registry was not aware about pendency of the case before the Hon'ble High Court, the Registry has destroyed the paper book in this case in terms of C.A.T. (Destruction) Rules, 1990. Accordingly the applicant is directed to either to make available requisite set of paper book of the OA 201/2001 or in the alternative it will be permissible for the applicant to file substantive OA for the same cause of action and in case the fresh OA is filed in the Registry the same shall be entertained. In case the applicant files paper book of the earlier OA, the Registry will register the same as fresh TA. The MA shall stands disposed of accordingly."

Therefore, it is clear that this second OA has been filed by the applicant in compliance with the directions issued by this Tribunal vide order dated 08.04.2010 and, therefore, it is maintainable.

10. The second preliminary objection raised by the respondents is that the OA has been filed at a belated stage. This point was considered by this Tribunal while deciding the OA No. 201/2001 and that OA was dismissed on the ground that the OA was barred by limitation. The applicant has filed the OA after 28 years of death of Shri Dhannalal Mehar. This order was challenged and Hon'ble High Court in DB Civil Writ Petition No. 100/2002 vide order dated 08.12.2009 had

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directed that the matter be heard and decided on merit within a reasonable time. Hon'ble High Court had considered at length the question of limitation and had come to the conclusion that the case of the applicant squarely covered by the ratio laid down by the Hon'ble Supreme Court in the case titled Union of India vs. Tarsem Singh, reported in 2008(8) SCC 648. Therefore, now the respondents again cannot take the plea of limitation after the direction of Hon'ble High Court. Thus in view of the direction of the Hon'ble High Court, the preliminary objection of the respondents that the present OA is time barred has no merit.

11. During the course of arguments, learned counsel for the applicant stated that this case is covered by the judgment of the Hon'ble Supreme Court in the case of Prabhavati Devi vs. Union of India & Others, Civil Appeal No. 10492/1995 (arising out of SLP (C) No. 9621/1991) dated 16.11.1995, AIR 1996 SC 752, wherein the Hon'ble Supreme Court has held that a casual worker acquiring status of substitute under Rule 2315 of Railway Establishment Code after completion of more than one year's continuous service before his death, acquires right & privileges of temporary servant and, therefore, his dependants are eligible for family pension under Para 801 of Manual of Railway Pension Rules. The relevant portion of Para 4 of the judgment is quoted below:-

"4. The deceased kept working as a substitute till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes

Anil Sehgal,

shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311: whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules."

12. The respondents have admitted that applicant's husband was a temporary employee of the Railways and they sought time to show the rule under which the deceased employee was not entitled for pension. However, in spite of opportunity being given to the respondents to show this rule, they have not been able to show any rule in this regard. The respondents have also not rebutted Annexures A/8 and A/9 annexed by the applicant alongwith the rejoinder regarding the GPF contribution of the deceased, cause of death and some details regarding his appointment, date of birth, PF Number and salary etc. However, these documents need to be verified ~~by~~ ^{the} respondents before a decision is taken regarding admissibility of family pension to the applicant. In the interest of justice, the respondents are directed to decide the issue of sanction of family pension to the applicant sympathetically according to the provisions of law/rule and circulars issued from time to time on the subject and with regard to the details of service rendered by the deceased husband of the applicant, Shri Dhannalal Mehar, and also keeping in view the ratio laid down by the Hon'ble Supreme

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Court in the case of Prabhavati Devi (supra). The respondents are directed to take a decision in this matter expeditiously, however, not later than a period of three months from the date of receipt of a copy of this order. If the applicant is aggrieved by the decision taken by the respondents, the applicant is at liberty to file a fresh OA.

13. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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