

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.02.2014

OA No. 417/2011 with MA 265/2011

Mr. S.C. Sethi, Counsel for applicant.

Mr. Anupam Agarwal and Mr. Y.K. Sharma, Counsel for respondents.

Heard learned counsel for the parties. The OA as well as MA are disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 417/2011
WITH
MISC. APPLICATION NO. 265/2011

Jaipur, the 13th day of February, 2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Smt. Bhagwanti Bai wife of Late Shri Satya Narayan, T.S. Carpenter posted at I.O.W./R.E. S.G.Z.(Shyamgarh) under R.E., Kota. Resident of C/o Sh. Madho Singh, Retd. Rly. Driver, Behind Surpin Hotel, Bheem Mandi, Kota.

... Applicant

(By Advocate: Mr. S.C. Sethi)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota (Rajasthan).
3. Divisional Electrical Engineer, Office of DRM, West Central Railway, Kota Division, Kota (Rajasthan).

... Respondents

(By Advocate: Mr. Anupam Agarwal & Mr. Y.K. Sharma)

ORDER (ORAL)

The applicant has filed this OA claiming for the following reliefs:-

- "(i) That the applicant may be declared eligible and entitled for grant of family pension on death of her husband Shri Satya Narian son of Onkar Lal from the date of his death.
- (ii) That order may be issued to the Respondents to sanction family pension in favour of the applicant from 18.08.1990 and to pay the arrears of family pension with interest at the rate of 12% per annum.
- (iii) Any other relief which the Hon'ble Tribunal find just and proper in the circumstances of the case may be allowed.

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2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant is the widow of Late Shri Satyanarayan son of Shri Onkar Lal, T.S. Carpenter, who was posted under IOW RE Shyam Garh (SGZ) under Divisional Electrical Engineer, Kota. Applicant's husband, Shri Satyanarain, died on 18.08.1990.

3. That Late Shri Satya Narayan was initially appointed on 22.07.1986 as Substitute Carpenter in the pay scale of Rs.950-1500/- and he was granted temporary status on 18.07.1987. The applicant's husband was appointed as Substitute against vacant post. He was allowed regular scale of pay along with yearly grade increments and other benefits available to a permanent/temporary Railway Servants. Regular provident fund deductions were made from his monthly salary. The applicant's husband died on 18.08.1990 after completion of regular service of four years and 26 days as a Substitute. At the time of death, he was drawing Rs.990/- as pay and Rupees 337/- as D.A. i.e. Rs.1327/- per month.

4. On the death of the husband of the applicant, she applied for family pension and appointment of her son and also for payment of retiral cum death benefits. The retiral benefits have been given and appointment on compassionate grounds was also given to the son of the applicant, Shri Balram. However, no action was taken in the mater of family pension of the applicant.

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5. The learned counsel for the applicant submitted that pension papers along with details of the members of the family for the purpose of family pension scheme were prepared by the Welfare Inspector and these were duly signed by the Project Manager and forwarded for the purpose of sanction of pension. A copy of the pension calculation sheet alongwith details of the family members were given also given (Annexure A/1 and A/2 respectively).

6. The learned counsel for the applicant submitted that husband of the applicant was initially appointed on 22.07.1986 as Substitute TS Carpenter in the pay scale of Rs.950-1500 against a clear vacant post and was continuously working without any break.

7. The learned counsel for the applicant submitted that the applicant is entitled to the family pension. Under the rules, the widow/widower/minor children of a temporary railway servant who dies while in service after a service not less than one year continuous (qualifying) service shall be eligible for family pension under the provisions of 801 of the manual of Railway Pension Rules.

8. He also drew my attention to Para 1515 of the Indian Railway Establishment Manual where the definition of the 'Substitute' has been given.

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9. He further submitted that in Rule 1515, it is prescribed that substitutes should be afforded all the rights and privileges as may be admissible to temporary Railway Servants from time to time on completion of four months continuous service. Since the husband of the applicant had completed more than one year service on the date of the death, therefore, the applicant is entitled for family pension. Therefore, he argued that respondents be directed to sanction family pension to the applicant w.e.f. 18.08.1990 along with interest @ 12% per annum.

10. On the contrary, the learned counsel for the respondents submitted that the applicant was appointed as Casual Labour on 22.07.1986 and he was extended temporary status on 22.07.1997 in the pay scale of Rs.950-1500. He admitted that the husband of the applicant died on 18.08.1990 while he was working with Railway Electrification Project, Kota. In their written submissions, it has been stated that the husband of the applicant, Late Shr Satya Narain son of Shri Onkar Lal was directly appointed as T.S. Carpenter under Chief Project Manager (R.E.), Kota. The learned counsel for the respondents denied that the husband of the applicant was appointed as Substitute against vacant post because according to the Annexure A/1 of the OA, there is nothing with regard to his appointment as substitute against vacant post.

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11 He further submitted that even for the sake of arguments, it is admitted that the husband of the applicant was appointed as a Substitute, even then the applicant has no right for family pension. Even those persons who are employed as Substitute are given temporary status after four months, the temporary status persons are not railway servants as defined in Rule 3(23) of Railway Services (Pension) Rules, 1993, which has been quoted below:-

"(23) "railway servant" means a person who is a 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 a Railway Board but does not include casual labour or Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control."

12. The temporary status employees are not members of the Railway Service. Therefore under the Railway Services (Pension) Rules, 1993, temporary status employees are not entitled for family pension.

13. He further submitted that as per Rule 3(26) of the Railway Services (Pension) Rules, 1993, even substitute shall not be deemed to be Railway servants unless he is absorbed as regular railway service. The husband of the applicant has served for only 3 years, 5 months, and 18 days with the Railway Department. Therefore, the applicant is not entitled for the family pension.

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14. He further submitted that the similar controversy has been settled by the Hon'ble Supreme Court in the case of **General Manager vs. Chanda Devi**, 2008 (2) SCC 108.

15. With regard to the consolidation instructions, the learned counsel for the applicant drew my attention to the consolidation instructions issued by the Railway Board regarding premature retirement and he drew my attention to instructions with regard to the substitute. **Para 6 of Chapter 6 -Other conditions of Service under the heading 'Substitutes'** of these instructions are quoted below:-

"Temporary Status: The substitutes who put in four months' continuous service shall be entitled to all the rights and privileges admissible to temporary Railway Servants....."

16. Further he drew my attention to Para 7 of the same heading 'Substitutes' which deals with Substitute Service reckoned for Pensionary benefits, which is quoted below:

"7. Substitute Service reckoned for Pensionary benefits: Service as substitute will count for pensionary benefits from the date of completion of four months (three months in the case of teachers) continuous service as substitute provided it is followed by absorption in regular Class III/IV (Group 'C' & 'D') service without break. The substitute service rendered before the issue of these orders will also be regulated accordingly. [R.B. No. F(E) III 69/PN 1/21 of 22-7-70] (NR., S.N. 5071).

and in view of these provisions, he submitted that the applicant is entitled for family pension.

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17. On the contrary, the learned counsel for the respondents submitted that Para 6 **of Chapter 6 -Other conditions of Service under the heading 'Substitutes'**, as quoted by the learned counsel for the applicant only states that the substitute who put in more than 4 months continuous service shall be entitled to temporary railway servant with regard to grant of temporary status to such substitute employees. The Note 2 of the same rules provides that the conferment of temporary status on the substitutes are after continuous service of four months does not, however, entitle them automatic absorption/appointment to railway service unless they are in turn for such appointment to regular Railway posts on the basis of their position in the select list and they are selected in the approved manner for appointment to regular Railway posts.

18. The learned counsel for the respondents also drew my attention to Para 7 of the same instructions with regard to "Substitute Service reckoned for Pensionary benefits", which was quoted by the learned counsel for the applicant. He emphasized that even this provision provides that the services of substitute will count for pensionary benefits from the date of completion of four months continuous service as substitutes provided it is followed by absorption in Class III/IV (Group 'C' & 'D') service without break. He argued that since the husband of the applicant was not absorbed in Class III/IV, therefore, the provisions of this Rule 7 are not applicable in the case of the applicant.

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19. The applicant has filed the rejoinder and the respondents have also filed additional reply.

20. The retiral benefits have already been given and the son of the deceased has also been given compassionate appointment. Therefore in the present OA, the main point for consideration is with regard family pension to the applicant.

21. The main contention of the learned counsel for the applicant is that the husband of the applicant was not appointed as a casual labour but was appointed as a substitute because he was given the pay scale from the date of his appointment. The respondents were directed to produce the original record of Late Shri Satya Narayan vide order dated 26.02.2013. Mr. Padmanabhan M., Divisional Electrical Engineer, Kota was present in the Court on 25.07.2013 and submitted that the service records with regard to Late Shri Satya Narayan are not available in their office. That service record with regard Late Shri Satya Narayan is with the General Manager (Electrical), Railway Electrification, Headquarter, Allahabad. They are trying to procure the record from that office. However, this original record could not be produced before the Tribunal.

22. It was submitted on behalf of the respondents that while applying for compassionate appointment for son of the applicant, the son admitted that the deceased was a temporary status employee.

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23. With regard to the query raised by the Tribunal, the learned counsel for the respondents submitted that even substitutes are given temporary status and that dependants of the temporary status employees are not entitled for family pension and to support his averment, he referred to the judgement of the Hon'ble Supreme Court in the case of **General Manager vs. Chanda Devi, 2008 (2) SCC 108.**

24. He further stated that even in Para 4.2 of the OA, it has been stated by the applicant herself that the deceased employee was granted temporary status on 18.07.1987. Thus this fact has not been disputed by the applicant that her husband was granted temporary status on 18.07.1987. However, he was not able to clarify whether any person can be appointed directly as temporary status employee.

25. From the perusal of Annexure A/1, which is pension calculation sheet prepared by the office of the respondent department, it is clear that Late Shri Satya Narayan was temporary status carpenter and he was appointed on 22.07.1986 and was granted temporary status on 22.07.1987. Moreover, from perusal of Annexure A/2 also, it is clear that Late Shri Satya Narayan was granted temporary status on 22.07.1987. Office order dated 06.02.1993 (Annexure A/3) states that Late Shri Satya Narayan was Ex. Casual Mason in the scale of Rs.950-1500, who expired on 18.08.1990. In the letter dated

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13.09.1993, which is an application from the applicant to, CPM (RE) (Annexure A/4), it has been stated that the husband of the applicant was working with the respondent department for the post of Mason.

26. Thus whatever records are available on file, it shows that the applicant was granted temporary status on 22.07.1987. Even if the arguments of the learned counsel for the applicant is accepted that the husband of the applicant was appointed as a substitute even then the applicant is not entitled for family pension. **Rule 7 of Chapter 6 -Other conditions of Service under the heading 'Substitutes'** which deals with the "Substitute Service reckoned for Pensionary benefits" clearly provides that service as substitute will count for pensionary benefits from the date of completion of four months continuous service as substitute provided it is followed by absorption in regular Class III/IV (Group 'C' & 'D') service without break. The husband of the applicant was not absorbed in regular Class III/IV (Group 'C' & 'D') before his death. Therefore the services rendered by the husband of the applicant as Substitute cannot count for pensionary benefits.

27. I have perused the Rule 3 (23) & (26) of the Railway Services (Pension) Rules, 1993, which deals with the definition of 'Railway servant' and 'Substitutes'. Rule 3 (26) which deals with 'substitute' clearly provides that substitute shall not be deemed to be government servant unless he absorbed in the regular

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railway service. The learned counsel for the applicant has not made out a case where the husband of the applicant was absorbed in the regular railway service. On the contrary, the record on file proves that the late Shri Satya Narayan was holding temporary status on the date of his death.

28. The learned counsel for the applicant argued that the applicant is entitled for family pension under Rule 801 of Railway Pension Rules 1950. I have perused this Rule and I am of the opinion that this rule is not applicable in the case of the applicant because it applies to the widow/widower of a railway servants who entered service on or after 1st January, 1964. In this case, the applicant was never a railway servant as defined in Rule 3(23) of the Railway Services (Pension) Rules, 1993.

29. The learned counsel for the applicant has also relied on Para 1512 of Indian Railway Establishment Manual, Vol. I. I have perused this Para. I find that it only deals with the definition of substitute.

30. The learned counsel for the applicant has also referred to Para 1515 of this Manual which deals with rights and privileges admissible to the substitutes. In this para, it has been stated that the substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service, will not entitled them to automatic

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absorption/appointment to railway service. Thus even the provisions of this para does not entitle the applicant for family pension.

31. I have carefully perused the judgment of the Hon'ble Supreme Court in the case of **General Manager, North Western Railway & Others vs. Chanda Devi, 2008 (1) SCC (L&S) 399**. The Hon'ble Supreme Court in this judgment has held that Railway Rules make distinction between casual labourers having temporary status and temporary railway servant. Pension Rules under which railway employees are granted pension do not apply to casual employee conferred with temporary status which protects only a casual employee service. Hence the widow of a casual labourer who was granted temporary status is not entitled to family pension. Para 32 of the judgment is quoted below:-

"32. What was protected by conferring temporary status upon a casual employee was his service and by reason thereof the Pension Rules were made not applicable. A workman had not been and could not have been given a status to which he was not entitled to."

32. Further the Hon'ble Supreme Court in the Civil Appeal No. 7145/2005 in the case of **Union of India & Others vs. Rukhiben Rupabhai decided on 21.07.2011** relying on the ratio as laid by the Hon'ble Supreme Court in the case of **General Manager, North Western Railway & Others vs. Chanda Devi (supra)**, allowed the appeal filed by the Union of India.

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The ratio laid down by the Hon'ble Supreme Court in these cases is squarely applicable under the facts & circumstances of the present OA. The late husband of the applicant at the time of his death was temporary status employee and, therefore, the applicant is not entitled to family pension being widow of a temporary status employee.

33. Thus on the basis of above discussion, I am of the opinion that the applicant has failed to make out a case for the grant of relief in the present OA.

34. Consequently, the OA being bereft of merit is dismissed with no order as to costs.

35. In view of the order passed in the OA, the MA No. 265/2011 stands disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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