

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 18.12.2014

OA No. 32/2013

Mr. S.C. Sethi, counsel for applicant.
Mr. Indresh Sharma, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

Anil Kumar
(ANIL KUMAR) —
ADMINISTRATIVE MEMBER

Kumawat

22/12/2014 —

order
postponed
today in
the open
Court by
the aforesaid
Bench

22/12/14.
C-0.

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 32/2013

ORDER RESERVED ON: 18.12.2014

DATE OF ORDER: 22-12-2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Prabha Kumari, aged about 46 years, by caste Rajput, W/o late Shri Raj Bahadur S/o Bhanwar Singh, Khallasi, Peon, who was posted at Sabar Kundla under Chief Project Manger (Construction), Western Railway, Ahmedabad-2.

Permanent Address: -

Prabha Kumari W/o late Shri Raj Bahadur,
Rang Talao, New Basti, Gali No. 6,
Ward No. 13, Near Modern School,
Kota (Raj.).

...Applicant

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

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. General Manager, Western Railway, Church Gate, Mumbai Central.
3. Divisional Railway Manager, West Central Railway, Kota Division, Kota (Raj.).
4. Chief Project Manger (Construction), Western Railway, 2nd Floor Station Building, Ahmedabad-2.

...Respondents

Mr. Indresh Sharma, counsel for respondents.

ORDER

The applicant has filed the present Original Application praying for the following reliefs:

"8.1 That the applicant is eligible for Family Pension from 10.04.2007 the date of death of her Husband Late Sh. Raj Bahadur and the respondents 1 to 4 be directed to issue sanction order of family pension in favour of the

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applicant immediately and to pay the arrears of pension and continue to pay the pension as per pension rules along with interest @ 12%.

8.2 That the Respondents may be directed to fix the pay of the applicant's husband as per recommendations of the 6th pay commission and to pay the arrears of pay along with interest and accordingly leave encashment may also be directed to be paid to the applicant.

8.3 That any other relief which the Hon'ble Tribunal deem proper in the facts and circumstances of the case may be allowed to the applicant."

2. The applicant had earlier filed an Original Application No. 109/2010 with Misc. Application No. 40/2010. In this Original Application also, the applicant had prayed for the grant of family pension.

3. Learned counsel for the applicant submitted that the respondents have sanctioned the medical reimbursement and also given appointment on compassionate grounds to one of the dependents of the deceased employee as directed by this Bench of the Tribunal vide its order dated 28th April, 2011 in O.A. No. 109/2010. However, the respondents have not so far sanctioned the family pension to the applicant. Therefore, he prayed that the respondents be directed to sanction the family pension in favour of the applicant and also that the respondents be directed to fix the pay of the applicant's husband as per recommendations of the 6th Pay Commission and thereafter to pay the arrears of pay along with interest and also the leave encashment.

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4. On the other hand, learned counsel for the respondents raised a preliminary objection that the relief claimed in the present Original Application has already been considered by this Bench of the Tribunal in the earlier Original Application No. 109/2010, therefore, the present Original Application again before the same forum, between the same parties and for the same relief is not maintainable and is barred by law and, therefore, the present Original Application be dismissed.

5. On the merits of the case, learned counsel for the respondents submitted that the husband of the applicant was holding temporary status and his services were never regularized and as per rules, pensionary benefits are admissible only to regular employee, therefore, the applicant is not entitled to family pension.

6. He further submitted that the contention of the learned counsel for the applicant that the applicant's husband had lien at Kota Division is baseless and wrong. He referred to para 13 of the order dated 28th April, 2011 passed by this Bench of the Tribunal in OA No. 109/2010 (Annexure A/5) in which the Tribunal had directed the applicant that since the document which has been relied upon by the applicant regarding lien of the applicant's husband at DRM Office, Kota was not signed by any railway authority, therefore, it

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would be incumbent upon the applicant to disclose to DRM, Kota (respondent no. 3 of that OA) the source from which this was obtained and the DRM, Kota was directed to verify the authenticity of that document within a period of three months from the date of receipt of a copy of that order and if claim of the applicant that her husband holds a lien at DRM Office, Kota, is found correct, then further necessary steps like sanction of family pension and other pensionary benefits may be examined as per rules on the subject.

7. Learned counsel for the respondents further argued that in compliance of these orders of the Tribunal, the applicant has not disclosed the source from which the document relied upon by the applicant regarding lien of the applicant's husband at DRM, Kota, therefore, the DRM, Kota was not in a position to take any decision in this regard. The applicant has so far failed to produce any authentic document which could prove that the applicant's husband was holding lien at DRM, Kota. Annexure A/1 of the present Original Application is also an unsigned document. In the absence of proper document(s), it is not possible for the respondents to take any decision with regard to the family pension of the applicant.

8. At this stage, learned counsel for the applicant argued that the applicant requested for a copy of the service book

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of her husband from the respondent-department but the same has not been provided so far to her. In reply to application of the applicant under RTI, the office of the Chief Project Manager, Ahmedabad vide their letter dated 10.04.2012 (Annexure A/8) have stated that the original service sheet and available leave account of applicant's husband has been sent to DRM (E), Kota vide this office letter dated 06.06.2011 in connection with his OA No. 109/2010, whereas the DRM, Kota vide their letter dated 09.03.2012 (Annexure A/9) have informed that the service record and leave account of late husband of the applicant have not been received at Kota Division from C.P.M. / Construction / Ahmedabad. Therefore, he stated that the respondents be directed to locate the service record and leave account of late husband of the applicant and do the needful in the matter. He has also produced the copies of the pay slips of late husband of the applicant and submitted that these are computerized generated statements and they are never signed. The respondents can check the same from the records.

9. Having heard the rival submissions of the parties, it is clear that the service book and leave account of late husband of the applicant have not been made available to the applicant. Learned counsel for the respondents admitted that these are official documents and they would

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be in the custody of the respondents. Therefore, I am of the view that the respondents may peruse the service record of late husband of the applicant and also verify his pay slips, if available, and then take a decision with regard to the sanction of the family pension in favour of the applicant.

10. Accordingly, the respondents are directed to reconsider the issue of sanction of family pension in favour of the applicant after examining the service record of late husband of the applicant within a period of three months from the date of receipt of a copy of this order.

11. With regard to the prayer of the applicant regarding fixation of pay of the applicant's husband as per recommendations of the 6th Pay Commission, the respondents have informed the applicant vide their letter dated 23/26.08.2011 (Annexure A/7) that the report of 6th Central Pay Commission was implemented in September, 2008, therefore, the pay of the applicant's husband was not fixed under 6th Central Pay Commission subsequent to his death. The husband of the applicant died on 10.04.2007. In response to this reply of the respondents, learned counsel for the applicant submitted that the benefit of 6th Central Pay Commission was made effective from 01.01.2006, therefore, the applicant is entitled for the

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benefit of 6th Central Pay Commission. At this stage, learned counsel for the respondents assured that in case the report of the 6th Central Pay Commission has been made effective w.e.f. 01.01.2006 in the respondent-department then the case of the applicant would also be reconsidered by the respondent-department as per rules.

12. Therefore, in view of the submissions made by the learned counsel for the respondents, the respondents are directed to reconsider the request of the applicant for fixation of pay of the applicant's husband as per recommendation of the 6th Central Pay Commission and if the request is found to be according to rules then to pay the arrears thereof within a period of three months from the date of receipt of a copy of this order.

13. With these observations and directions, the present Original Application is disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat