

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORDER RESERVED ON 23.02.2015

DATE OF ORDER : 17.3.2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 742/2013

1. Smt. Neelu Devi @ Nirmala Devi wife of Late Shri Narain Singh aged about 48 years, resident of House No. 255/49, Jawahar Nagar, Shastri Nagar, Near Kanal Gardens- Ajmer.
2. Gaurav son of Late Narain Singh, resident of House NO. 255/49, Jawahar Nagar, Shastri Nagar, Near Kanal Gardens, Ajmer.

... Applicants

(By Advocate: Mr. Sunil Samdaria)

Versus

1. Bharat Sanchar Nigam Limited (BSNL) through its Chief General Manager- NTR (Maintenance Wing), 2nd Floor, Kidwai Bhawan, Janpath- New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Limited, Rajasthan Circle, Sardar Patel Marg, Jaipur.
3. Sub Divisional Engineer, OFC, Maintenance, BSNL, Udaipur.

... Respondents

(By Advocate: Mr. T.P. Sharma)

2. ORIGINAL APPLICATION NO. 743/2013

- 1 Smt. Neelu Devi @ Nirmala Devi wife of Late Shri Narain Singh aged about 48 years, resident of House No. 255/49, Jawahar Nagar, Shastri Nagar, Near Kanal Gardens- Ajmer.

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... Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Since the facts & law points in both the OA are similar, therefore, with the consent of the parties, both the OAs are disposed of by a common order. For the sake of convenience, the facts of OA No. 742/2013 are being taken as a lead case.

2. The brief facts of the case, as stated by the learned counsel for the applicants, are that the applicant no.1 is the wife of deceased Shri Narain Singh, and applicant no. 2 is the son of deceased Shri Narain Singh. Shri Narain Singh was working as Driver with the respondent department. He died on 18.11.2007.

3. That Shri Narain Singh was appointed as Driver on daily wage basis vide order dated (Annexure A/3).

4. That a departmental proceedings were drawn against Shri Narain Singh vide charge sheet dated 29.07.1992 on utterly unfounded allegation. That Shri Narain Singh was directed to be removed from service vide order dated 26.09.1994 (Annexure A/9). Being aggrieved by the order of removal, Shri Narain Singh filed an OA No. 140/1995 before the Central Administrative Tribunal, Jodhpur Bench, Jodhpur.

The Tribunal vide order dated 12.04.2000 dismissed the OA. In

Para No. 9 of the order, the Tribunal has observed as under:-

"9. In the light of the above definition of a Government servant and application of CCS (CCA) Rules, 1965, the applicant cannot be put in the category of a Government servant. The applicant was working with the respondent as casual driver on daily wages basis and, therefore, he cannot challenge the action of the respondents on the ground that procedure prescribed in the CCS (CCA) Rules, 1965, was not followed."

5. Since the Tribunal held that CCS (CCA) Rules, 1965 are not applicable to the applicant as he was working with the respondents as Casual Driver on daily wage basis, therefore, Shri Narain Singh raised the Industrial Dispute before the Government of India challenging the legality and validity of the last termination/ removal order dated 26.09.1994. The Government of India referred the Industrial Dispute for adjudication to the Industrial Tribunal, Ajmer vide order dated 31.05.2001. That the Industrial Tribunal vide award dated 20.06.2006 answered the reference (LCR No. 15/2001) in affirmative and declared that the termination/removal effected vide order dated 26.09.1994 was illegal and invalid in eye of law. Shri Narain Singh was directed to be reinstated by the same award though without back wages (Annexure A/12).

6. That challenging legality and validity of the award dated 20.06.2006, both Shri Narain Singh and the Department filed Writ Petitions before the Hon'ble High Court. Shri Narain Singh filed the Writ Petition saying that the award was invalid in so far as it denies the back wages to him. The Department filed the Writ Petition saying that the award was wholly invalid. The

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aforesaid Writ Petitions were registered as SB Writ Petition No. 9266/2006 and SB Writ Petition No. 7037/2006 respectively.

7. That during the pendency of the above Writ Petitions, Shri Narain Singh died on 08.11.2007. After the death of Shri Narain Singh, all the legal representative of the deceased including the applicants in the present OA were directed to be taken on record. Both the Writ Petitions were dismissed by the Hon'ble High Court upholding the award by the Tribunal vide order dated 08.07.2011.

8. That as a consequence of upholding of the award passed by the Labour Court cum Industrial Tribunal, the services of the deceased Shri Narain Singh is to be treated as continuous one from the date of initial engagement till his death that is from 18.12.1985 till 18.11.2007 (22 years) despite two terminations because both the terminations were set at naught by the Industrial Tribunal and the award of the Industrial Tribunal with regard to the reinstatement of the applicant in the later termination case has also been upheld by the Hon'ble High Court.

9. The learned counsel for the applicants submitted that for the reasons that Shri Narain Singh had rendered 22 years of continuous service and died during continuous service, the applicants are entitled to be considered for compassionate appointment (OA No. 742/2013) as well as terminal benefits such as gratuity, leave encashment, family pension and other admissible retiral benefits (OA No. 743/2013).

10. The learned counsel for the applicants submitted that it is incorrect for the respondents to state that deceased employee did not stand reinstated before his death on 18.11.2007. The award to reinstate the applicant by the Labour Court cum Industrial Tribunal was passed on 20.06.2006 declaring the order of removal from served dated 26.09.1994 as illegal. The respondents were under obligation to pass a formal order of reinstatement at least within three months' period of award by notification dated 12.07.2006 but the respondents did not pass any such formal order of reinstatement. The respondents preferred a Writ Petition against this order before the Hon'ble High Court but the Hon'ble High Court did not stay the order passed by the Labour Court cum Industrial Tribunal and finally dismissed the Writ Petition filed by the respondent department. The learned counsel for the applicant submitted that perusal of the Hon'ble High Court order would demonstrate that the applicants are entitled for benefits as prayed by them in these two OAs.

11. On the other hand, the respondents have filed their reply. In their written reply, the respondents have stated that the applicants are taking shelter of the observation given by the Hon'ble High Court in its judgment dated 08.07.2011 whereby the Hon'ble High Court while dismissing the Petition has observed that legal representatives of the deceased workman (Shri Narain Singh) are entitled for terminal benefits admissible to the Workman under law. As per law, since Shri

Narain Singh was employee of the respondent department as Casual Driver on daily wage basis, therefore, the applicants are not entitled for any terminal benefit or compassionate appointment. The respondents have admitted that the applicants filed an OA, which was dismissed by the Tribunal vide order dated 12.04.2000 on the ground of non availability of protection by CCS (CCA) Rules, 1965. They have also admitted that the Labour Court cum Industrial Tribunal declared that the termination/removal order of Shri Narain Singh with effect from 26.09.1994 as illegal and that he was directed to be reinstated. They have also admitted that a Writ Petition was filed before the Hon'ble High Court by the respondents as well as by deceased Shri Narain Singh. That both the Writ Petitions were dismissed by the Hon'ble High Court vide order dated 08.07.2011. However, they have denied that as a consequence of this order, Shri Narain Singh is to be treated in service on continuous basis with effect from the date of his initial engagement till his death. They have stated that Shri Narain Singh is not working continuously as stated in Para No. 4(xxix) by the applicant. Therefore, the claim of the applicant is not maintainable. That the OAs filed by the applicants are time barred. That Shri Narain Singh was not appointed on any post of Driver but he was engaged from time to time to discharge the duties of Driver on daily wage basis, therefore, the applicants are not entitled for the relief claimed in the OAs.

12. Heard the rival submissions of the parties and perused the documents on record. The basic facts of both the OAs are admitted by the parties. That Shri Narain Singh was appointed on daily wage basis with the respondent department. From the perusal of the appointment letter of Shri Narain Singh dated 18.12.1985 at Annexure A/3 (OA No. 742/2013) clearly shows that he was appointed as Driver on daily wage basis @ Rs.15/- per day. The counsel for the applicant could not show any subsequent letter which has changed the status of Shri Narain Singh from that of daily wage driver to that of regular Driver though he drew my attention to a Experience Certificate dated 13.11.1986 (Annexure A/4), which reads as follows:-

"Indian P & T Department

EXPERIENCE CERTIFICATE

It is certified that Sh. Narain Singh, CIO has worked in this office since 20.12.85 as casual driver satisfactory.

Sd/-

13.11.86

E. Carrier Ajmer - 305001"

But any Experience Certificate issued by any Officer of the Department cannot change the status of appointment of an employee. Even this Experience Certificate mentions that Shri Narain Singh was working as Casual Driver.

13. Therefore, I am inclined to agree with the contention of the learned counsel for the respondents that Shri Narain Singh was working with the respondent department as Casual Driver on daily wage basis.

14. The learned counsel for the applicants in support of his arguments referred to the judgment of the Hon'ble Supreme Court in the case of **Yashwant Hari Katakhar vs. Union of India & Others**, 1996 SCC (L&S) 464. I have carefully perused the judgment of the Hon'ble Supreme Court and I am of the view that the ratio decided by the Hon'ble Supreme Court in this case would not be applicable under the facts of the present OA. The employee before the Hon'ble Supreme Court was enjoying the quasi permanent status whereas in the present case, the applicant was serving as Casual Driver on daily wage basis. The appellant before the Hon'ble Supreme Court was given voluntary retirement by the Department whereas in the present OA since the applicant was working on daily wage basis, there was no question of giving retirement to the applicant.

15. The learned counsel for the applicants also referred to the order of the Hon'ble Rajasthan High Court in the case of **Ismail Khan vs. State of Rajasthan** (SB Civil Writ Petition No. 897/1983 decided on 18.11.1993). The Hon'ble High Court of Rajasthan at Jaipur in this case has held that the petitioner was working on daily wage basis but he was not earner towards an unanticipated work. Therefore, it is to be presumed that he was temporary employee during the period he was earning daily wages and for this reason, held that the period lying between 31.07.1964 to 30.07.1967 also falls within the definition of qualifying service and the petitioner is entitled for the benefit of pension in accordance with the rules. Therefore,

the learned counsel for the applicant argued that even in the present case though Shri Narain Singh was working with the respondent department as daily wage driver on casual basis but it was not against unanticipated work. Therefore, the services rendered by Shri Narain Singh as daily wage Casual Driver be treated as temporary service and accordingly he is entitled for pension and other retiral benefits. While deciding the case of the applicants, the respondents would also examine the ratio decided by the Hon'ble High Court of Rajasthan in the case of **Ismail Khan vs. State of Rajasthan** (supra), as relied upon by the learned counsel for the applicants.

16. Moreover, the Hon'ble High Court in last Para of the order dated 08.07.2011 (Annexure A/15) has held that:-

"Consequently, both the petitions are devoid of merit and are hereby dismissed. However, it is made clear that since the workman died pendente lis, obviously could not be reinstated in terms of the Award impugned, which has been upheld by this Court but as a consequence whereof, legal representatives of deceased workman are entitled to terminal benefits admissible to the workman under law."

17. Further, the respondents in reply to legal notice served by the applicants have also stated that "so far as other terminal benefits are concerned, same will be considered and paid to the legal representatives in accordance with law." Therefore, even the respondents have not denied that the applicants are not entitled for the terminal benefits. It is unfortunate that in spite of the Hon'ble High Court's order dated 08.07.2011, the respondents have not considered the

Issue on payment of terminal benefits to the legal representatives of the deceased in accordance with the law for more than four years. Therefore, the respondents are directed to consider the payment of terminal benefits including pension, if any, as admissible to the legal representative in accordance with law within a period of three months from the date of receipt of a copy of this order.

18. With regard to providing compassionate appointment to one of the dependants of the deceased though the deceased could not be reinstated in terms of the award impugned but the termination of the workman was quashed and set aside by the Industrial Tribunal. This order of the Tribunal has been upheld by the Hon'ble High Court vide order dated 08.07.2011.

Therefore, it cannot be said that at the time of death status of Shri Narain Singh was that of a terminated employee. Therefore, the respondents are directed to consider the case of compassionate appointment afresh in accordance with the provisions of law. The respondents are directed to consider that had respondents reinstated Shri Narain Singh in pursuance of the order of the Industrial Tribunal before his death and then Shri Narain Singh would have died, then whether his dependants would have been entitled for consideration of appointment on compassionate grounds subject to fulfillment of the conditions of the Scheme for providing employment of compassionate grounds. The respondents are directed to examine the issue of providing

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appointment on compassionate grounds within a period of three months from the date of receipt of a copy of this order.

19. With these directions as issued in Para nos. 15, 17 and 18 of this order, the OAs are disposed of with no order as to costs.

20. The Registry is directed to place a certified copy of this order in the file of OA No. 743/2013.

(ANIL KUMAR)
MEMBER (A)

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