

(Reserved on 12.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

This the 02nd day of February, 2018.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00271/2016

Smt. Chenara Devi, aged about 68 years, Wife of Late Munni Lal, Resident of Village Kapuri, Post Officer Bharari, District - Allahabad, Pin Code - 212303.

.....Applicant.

VE R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
 2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
 3. Senior Division Personnel Officer, North Central Railway, Allahabad Division, Allahabad.
-Respondents

Advocate for the applicant : Shri A.K. Srivastava

Advocate for the Respondents: Shri Prashant Mathur

ORDER

By means of the present original application the applicant has prayed for a direction to the respondents to grant family pension with effect from 02.11.1988 alongwith interest.

2. The facts of the case, as per the O.A, in brief are that the applicant is widow of Late Munni Lal, who was initially engaged on 24.08.1981 as Gang Man under PWI, Meja Road Railway Station in the Northern Railway (now North Central Railway) and died on 02.11.1988. At the time of his death, the deceased employee had worked for 7 years 2 months and 8 days. It is contended that as per Serial No. 3214 – Circular No. 720-E/O – IX (Pension) dated 26.10.1965 (Annexure A-2 to the O.A), the applicant is entitled for family pension as her husband died during service period and had completed 7 years 2 months and 8 days. To support her claim, the applicant has also relied on a judgment of Hon'ble Supreme Court in Civil Appeal No. 10492/1995 arising out of SLP (C) No. 9621 of 1991 – Prabhavati Devi Vs. Union of India & Ors (Annexure A-3 to the O.A). For redressal of her grievance, the applicant sent a

letter on 12.10.2015 to the Divisional Railway Manager, North Central Railway, Allahabad (Annexure A-4 to the O.A). Having received no response, the applicant has filed the instant original application on the ground that since the deceased husband had worked as Gangman under P.W.I, Meja Road Railway Station for more than 7 years, she is entitled for family pension as per the provision of Circular Letter dated 26.10.1965 (Annexure A-2 to the O.A) as well as the judgment of Hon'ble Supreme Court in Civil Appeal No. 10492/1995 arising out of SLP (C) No. 9621 of 1991 – Prabhavati Devi Vs. Union of India & Ors.

3. The respondents have contested the claim of the applicant and have filed Counter Reply. It is stated that there is no document filed by the applicant about working of her husband Late Munni Lal as Gangman under PWI, Meja Road Railway Station and in absence of any document the authenticity of working of Late Munni Lal cannot be verified at this belated stage. It is further stated that the instructions issued under Serial No. 3214 are not applicable in the case of the applicant as no document has been enclosed by the applicant in support of her that Late Munni Lal had been granted temporary status or had been considered to be regular employee after due screening by the Committee. The applicability of ratio of judgment of Hon'ble Supreme Court in the case of Prabhavati Devi (Supra) to the present case has been contested by the respondents. It is also stated that in a similar case, this Tribunal has passed order dated 01.05.2012 in O.A No. 1385/2010 rejecting the claim for identical / similar relief. Copy of the order of this Tribunal has been enclosed at Annexure CR-1 to the Counter Reply. Thus the claim for family pension is devoid of any merits.

4. The applicant has filed Rejoinder Affidavit reiterating the facts in O.A. It is also contended that her son Shri Keshav Prasad has been appointed as Box Khalasi on compassionate grounds vide order dated 02.01.1998 (Annexure RA-1 to the Rejoinder Affidavit). Therefore, it is proved that her husband was working in the railways and she is entitled for family pension as per the provisions of Serial No. 3214 – Circular No. 720-E/O – IX (Pension) dated 26.10.1965.

5. Heard Shri A.K. Srivastava, learned counsel for the applicant and Shri P.K. Mishra, proxy for Shri P.Mathur, learned counsel for respondents and considered the pleadings in this case.

6. The learned counsel for the respondents has raised a preliminary objection with regard to the delay in filing this O.A. In this case, the applicant has filed a delay condonation application which has already been allowed vide order dated 17.02.2017 and the delay has been condoned by this Tribunal.

7. Learned counsel for the applicant stated that the applicant was given temporary status after 120 days of engagement but he could not be regularised till his death on 02.11.1988. The applicant submitted her application for family pension to the respondents which was not considered. The learned counsel submitted that as per the circular of the Railway Board dated 26.10.1965 at Annexure A-2 to the O.A, the applicant is eligible for family pension. It was also stated that the applicant does not have any documents other than what has been furnished in the O.A relating to the service of her husband under the respondents.

8. The learned counsel for the respondents submitted that the husband of the applicant was not regularised and he was working as a casual worker till his death. Therefore, the Railway Board's Circular dated 26.10.1965, which is applicable only for regular employees, will not be applicable to the present case. Learned counsel also cited an order dated 01.05.2012 passed by this Tribunal in O.A No. 1385/2010 – Phool Kali (Smt.) Vs. Union of India & Ors where in a similar case this Tribunal found the applicant to be ineligible for family pension. It was also submitted that no document to prove that husband of the applicant was regularized by the respondents.

9. The main issue to be decided in this case is whether the husband of the applicant was regularised as per the procedure laid-down by the respondents. It is noted that as per the circular dated 26.10.1965 (Annexure A-2), the family pension scheme in the railway is applicable in a case of regular employee on pensionable establishment. The casual labourers can be brought on pensionable established only after their absorption against regular temporary post. For such employees, who have been regularised, the family pension is available or they are entitled to family pension scheme after completion of one year regular service from the date of their absorption absorbed against a regular post.

10. The applicant has not been able to submit any document to show that her husband was regularised in the railway establishment against a regular temporary post as laid down in circular dated 26.10.1965 of the Railway Board. The fact that the son of the applicant has been given appointment by the respondents on compassionate grounds will not imply that husband of the applicant was regularised by the railways. Also, just because the railway employee was granted temporary status, it does not entitle him for the benefit available under family pension scheme unless he/she is absorbed against a regular post.

11. The respondents have cited the order dated 01.05.2012 passed by this Tribunal in O.A No. 1385/2010 (Annexure CR-1). In this case, the claim of the wife of the railway employee for sanction of family pension and DCRG was rejected by the respondents. In the said order, this Tribunal has referred to an order dated 05.09.2007 passed by the Full Bench, Principal Bench, New Delhi in O.A No. 1722/2005 which held as under: -

“whether widow of casual labourer with temporary status, died in harness is entitled to family pension under the provisions of Railway Services (Pension) Rules, 1993?”

Reframed as under:

“Whether the legal representatives of a casual labourer who had attained temporary status could be denied benefits of family pension for the reason that before his death he had not been subjected to screening and had not been formally regularized in service.”

In the said reference following answer was given:

“Legal representative of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is essential that before his death, he should have been regularized in service, which only enables the legal representatives to claim the benefit of family pension. This will also be subject to the conditions laid

down under the provisions of the Railway Service (Pension) Rules 1993 or circulars issued from time to time.”

12. It is clearly held that the casual labour, who has attained temporary status, but not screened and regularised in service, is not entitled to the benefit of family pension, as per the provisions of Railway Service (Pension) Rules, 1993. Relying on the judgment of Full bench (Supra) and other judgments this Tribunal in the aforesaid order dated 01.05.2012 has held the applicant ineligible for family pension as per the rules.

13. It is found that the present case of the applicant is squarely covered by the order dated 01.05.2012 passed in O.A No. 1385/2010 since there is no evidence on record to show that the husband of the applicant was regularised as per the laid-down procedure. Hence, the O.A lacks merit and it is dismissed.

14. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER- A.

Anand...