

(Reserved on 20.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 26th day of *April, 2018*.

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

Original Application Number. 330/01482/2014

Smt. Somoti, Widow of Late Ghurey, R/o Village – Dhana Kherly, P.O Roopvas, District – Bharatpur (State of Rajasthan).

.....Applicant.

VE R S U S

1. Union of India through General Manager, West Central Railway, Headquarters' Office, Jabalpur (State of Madhya Pradesh).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota Jn. (State of Rajasthan).
3. Permanent Way Inspector, West Central Railway, Kota Division, Idgah, Agra.

.....Respondents

Advocate for the applicant : Shri Rakesh Verma

Advocate for the Respondents: Shri Anil Kumar

ORDER

By means of the present original application the applicant has prayed for following main reliefs: -

“(i). to issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 10.09.2014, passed by the Respondent No. 2, rejecting the representation of the petitioner dated 16.09.2011 and, thereby, denying the entitlement and the benefit of family pension to the petitioner on misconceived and

unlawful grounds (Annexure A-1 to Compilation No. I of this petition).

(ii). to issue a writ, order or direction in the nature of Mandamus directing the Respondent Nos. 1 & 2 to grant family pension to the petitioner at the appropriate rate with effect from 04.01.1989 (deceased husband died on 03.01.1989) with further fixation pursuant to Vth and VIth CPC and to pay all arrears as may become due in favour of the petitioner and further they be directed to pay the family pension from time to time continuously month to month in terms of ratio laid down by the Hon'ble Supreme Court in the case of Prabhavati Devi versus Union of India and others, reported in 1996 SCC (L&S) 369, within a period as may be fixed...” .

2. The facts of the case, as per the O.A, in brief are that the applicant is widow of Late Ghurey, who was initially engaged as casual labour and after screening, he was appointed as substitute Gang Man w.e.f. 08.11.1982 against substantive vacancy. The husband of the applicant died on 03.01.1989. It is stated that after putting 120 days continuous service w.e.f. 08.11.1982, deceased husband was allowed regular pay scales with benefits of annual increments and other allowances as are given to a temporary Railway servant. After the death of the deceased husband, the applicant preferred representation dated 23.06.2011 followed by another representation dated 16.09.2011 (Annexure A-5 to the O.A) claiming the benefit of family pension. Having received no

response, the applicant filed O.A No. 660/2014 which was disposed of by this Tribunal vide order dated 22.05.2014 (Annexure A-6 to the O.A) with direction to the respondents to decide the representation of the applicant within a period of two months. Pursuant to the order of this Tribunal, the respondents considered the representation of the applicant and rejected the same vide impugned order dated 10.09.2014 (Annexure A-1 to the O.A).

3. Aggrieved, the applicant has filed the instant O.A on the ground that the respondent have failed to appreciate the law and rule on the subject of family pension to the widow / children of a substitute Railway servant. To support this contention, the applicant has relied upon para 1512 to 1516 of the Indian Railway Establishment Manual Vol.I (1989 Edition) (Annexure A-2 to the O.A) which define the status of substitutes in the Railways. It is further stated that since the deceased husband of the applicant had worked as a substitute Gangman continuously for more than 6 years, she is entitled for family pension as per the judgment of Hon'ble Supreme Court in the case of Prabhavati Devi Vs. Union of India & Ors – 1996 SCC (L&S) 369 (Annexure A-7 to the O.A) where it has been held that the family of a Substitute, who dies after continuing for over a year becomes entitled to family pension as per para 2315, 2318 and 2311(3)(b) as well as per para 801 of

Manual of Railway Pension Rules. It is further stated that while holding the aforesaid ratio, in paragraph 4 and 5 of the said judgment, Hon'ble Apex Court has also referred the judgment in the case of Robert D'Souza Vs. Executive Engineer, Southern Railway – 1982 SCC (L&S) 124 and Union of India Vs. Basant Lal – 1992 SCC (L&S) 611. .

4. The respondents have contested the claim of the applicant and have filed Counter Reply. The respondents have an objection with regard to the delay in filing this O.A on the ground that the husband of the applicant died in the year 1989 and the instant O.A has been filed in the year 2014 i.e after about 25 years from the date of cause of action arose. It is stated that the claim of the applicant for family pension has already been rejected vide order dated 28.12.2011 (Annexure CR-1 to the Counter Reply) on the ground that the deceased husband was not regular employee and this order dated 28.12.2011 was not challenged by the applicant either in O.A No. 660/2014 or in the present O.A. It is further stated that the applicant has not enclosed any documentary evidence to support the contention that her husband was screened for his engagement as a substitute Gang Man. It is contended that mere working on as substitute Gang man without regularization, the deceased cannot be treated as regular employee as per Chapter I-3 (26) of Railway Services (Pension) Rules, 1993

(Annexure CR-2 to the Counter Reply). Hence, the applicant is not entitled for family pension. It is further stated that as per para 1512 of IREM, substitutes are engaged due to non-availability of permanent or temporary Railway servant. Hence, the substitute cannot be treated as temporary Railway servant. The respondents have further stated that para 19 of Rule 75 of Railway Pension Rules defines admissibility of family pension on continuous service.

5. The applicant has filed Rejoinder Affidavit reiterating the contentions taken in the O.A.

6. Heard Shri Rakesh Verma, learned counsel for the applicant and Shri Anil Kumar, learned counsel for respondents and considered the pleadings in this case.

7. Regarding merits of the case, learned counsel for the applicant submitted the following:-

- The applicant's husband had worked for about 6 years as a substitute gangman under the Railways.
- A substitute employee enjoys the status of a temporary railway employee as per the provisions of the Indian Railway Establishment Manual (in short IREM).
- The judgment of Hon'ble Apex Court in the case of Prabhavati Devi vs. Union of India and Others fairly covers the case of the applicant.

- In the case of Rabia Bikaner and others, Hon'ble Apex Court has held that the petitioners in that case are not entitled for family pension, since the deceased employees were casual employees, not substitute employee as in the case of Pravavati case. But in the present case, the deceased employee being a substitute gang man under Railways, the judgment in Pravavati case would apply.
- Para 1515 of the IREM (Annexure A-2) gives the status of a temporary railway servant to the substitute railway servants, which is the reason for their entitlement of family pension.

8. The respondents' counsel submitted that the claim has been filed after about 20 years, hence it is barred by time. It was also pointed out by him that the earlier decision of the respondents vide order dated 28.12.2011 (Annexure CR-1 to the Counter) has not been challenged in this OA. The reason for rejection of the applicant's claim by the respondents is that her husband was not regularized in service before his death. He further pointed out to the Note under para 1515 of IREM, which states that conferment of temporary status will not entitle the substitute employees for automatic absorption unless they are selected in approved manner. It was further pointed out that as per the Rule 75 of the Railway Services (Pension) Rules, 1993 (Annexure A-4) clearly states that the family pension is applicable for pensionable service. Hence, the applicant is not entitled for family pension.

9. The respondents have raised the issue of delay in filing of this OA by the applicant, with the contention that the death of the husband of the applicant occurred on 3.01.1989 and the applicant has filed the OA in 2014, i.e. after 25 years. Before considering merit of the case, the issue about delay is to be decided. I am not able to accept the argument of the respondents in view of the applicant's claim in the OA that her claim for family pension is a recurring cause of action. The question of limiting the family pension from the date of application of the wife of the deceased employee was decided by Hon'ble Apex Court in the case of **S.K. Mastan Bee vs. General Manager, South Central Railway and another reported in 2003 SCC (L&S) 93**, which has been cited by the applicant's counsel. In this case also the petitioner's claim for family pension was filed in 1991 after 22 years of death of her husband. In this case, Hon'ble Apex Court held as under:-

"6.....The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal, in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her

and also in view of the fact that her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of death of her husband. Consequently, we are of the considered opinion that the Division bench fell in error in restricting that period to a date subsequent to 1-4-1992.”

The ratio of above judgment of Hon'ble Apex Court squarely covers the present case of the applicant, who is claiming family pension for her deceased husband and non-payment of the family pension is a recurring cause of action for which there is no question of delay and the objections raised by the respondents are not tenable.

10. Coming back to the merit of this O.A, the applicant has cited the judgment of Hon'ble Supreme Court in the case of Prabhavati Devi Vs. Union of India & Ors (Supra). In this case, the husband of the petitioner had acquired status of a substitute which was interpreted by the Hon'ble Apex Court with reference to Rule 2315 as follows: -

“4. The deceased kept working as a ‘substitute’ till 5-1-1987 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 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. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the Central Administrative Tribunal, Patna Bench, Patna, was dismissed which has culminated in this appeal.

*5. On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support *L. Robert D'Souza v. Executive Engineer, S. Rly.* [(1982) 1 SCC 645 : 1982 SCC (L&S) 124] and *Union of India v. Basant Lal* [(1992) 2 SCC 679 : 1992 SCC (L&S) 611 : (1992) 20 ATC 280 : JT (1992) 2 SC 459]. We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the*

orders of the Tribunal; overlooking as it does the chain in consequence, making the deceased acquire a temporary status and on his demise his widow and children acquiring the right to claim family pension.”

11. In this case, the husband of the applicant was appointed as substitute Gangman, which has not been denied by the respondents. As per the existing provisions of the IREM, the definition of substitute employee has been given in para 1512, which states as under: -

“1512. Definition – “Substitute” are persons engaged in India Railway Establishments on regular scale of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.”

Para 1515 of IREM deals with the rights and privileges of the substitute, which states as under: -

“1515. Rights and privileges admissible to the Substitutes – 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. Substitutes school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purpose

except seniority on their eventual absorption against regular posts after selection.

Note - The conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption / appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and / or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Railway Recruitment Board Examination will be entitled to relaxation of age by the period of service as substitute subject to the age of 35 years not being exceeded, provided he has out in 3 years (at one stretch or broken) service as substitute / casual labour.”

12. From the above, it is clear that a substitute employee is recruited against regular vacancy with regular scale of pay and after completion of four months continuous service he is entitled for rights and privileges as admissible to a temporary railway servant. Under the rule 18(3) of the Railway Services (Pension) Rules, 1993, the benefit extended to temporary railway servant includes family pension. Rule 18(3) states as under :-

“18. *Pensionary, terminal or death benefits to temporary railway servants -(1).....*
(2).....
(3). In the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent railway servants under these rules.”

13. Under the rule 75(2) (Annexure A-4) of Railway Services (Pension) Rules, 1993, a regular railway servant after his death is entitled to family pension after completion of one year of continuous service. Taking into account the provisions of the rules 18(3) and 75 of the Railway Services (Pension) Rules, 1993 and applying the ratio of the judgment of Hon'ble Apex court in the case of Prabhavati Devi (Supra), it is clear that the deceased husband of the applicant, who was a substitute Railway employee, had acquired rights and privileges as admissible to a temporary railway servant. Hence, the family pension is admissible to the applicant in terms of the rule 18(3) and 75 of Railway Services (Pension) Rules, 1993 and para 1515 of IREM, since the deceased husband of the applicant had completed more than one year continuous service as a substitute employee. In view of the contention of the respondents that the deceased employee was not regularized and he did not belong to pensionable establishment, is not acceptable and hence, it is rejected.

14. Learned counsel for the respondents had also pointed out to the "Note" in the para 1515 of the IREM. This "Note" pertains to absorption / appointment to Railway service, which means that the substitute will not be entitled automatically for regularization / absorption unless he goes through the process in approved manner. In this case, the issue is sanction of family pension, not

regularization. Therefore, the “Note” to para 1515 of IREM will not be a hindrance to decide eligibility of the applicant for family pension.

15. The learned counsel for the applicant has also cited an order dated 04.06.1999 passed by C.A.T., Lucknow Bench in O.A No. 524/1997 – Smt. Kamini Srivastava Vs. Union of India & Ors. In this case also, the applicant’s husband died in 1989 while working as a substitute employee in Lokoshed, Northern Railway and he acquired temporary status w.e.f. 30.06.1979. He was also extended the benefit of a temporary Railway servant. In this case, the Tribunal has held as under: -

“8. The cause of action for the applicant arose in the year 1989 when the applicant’s husband died, but the claim has been preferred in the year 1997. The amount of family pension accrues to a widow every month. So it is a continuing cause of action and the applicant is within her right for claim of family pension. As regards arrears, it is provided that though the applicant shall get arrears of family pension, but interest thereon shall not be payable to her.

9. in view of the above discussions, the O.A is allowed as per direction given above, The amount of family pension calculated as per rules and the amount of Group Insurance shall be paid to the applicant within a period of three months from the date of communication of this order.”

16. In view of the facts of this case and above discussions, I am of the view that the case of the applicant in this case is squarely covered by the judgment of Hon’ble Apex Court in Prabhavati

Devi Vs. U.O.I & Ors (Supra) and also by the order dated 04.06.1999 passed by CAT, Lucknow Bench in O.A No. 534/1997.

17. Accordingly, the O.A is allowed. The impugned order dated 10.09.2014 rejecting the representation of the applicant for sanction of family pension is set aside and quashed. The respondents are directed to sanction and disburse the family pension including the arrears, in favour of the applicant as per the Rules and as discussed in this order with effect from 04.01.1984 i.e. after the date of death of the applicant's husband, within a period of two months from the date of receipt of certified copy of this order. In case the family pension including the arrears is not paid to the applicant within two months from the date of receipt of this order, then the respondents shall also pay interest to the applicant at the rate of 8% per annum on the amount of family pension from the due date till the date of payment. No costs.

**(GOKUL CHANDRA PATI)
MEMBER- A.**

Anand...