

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-962/2014

Reserved on : 12.05.2016.

Pronounced on : 18.05.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Smt. Vidyawati W/o late Sh. Shankar Lal,
R/o Q.No. T4, Hut House-B,
In front of Power House,
Railway Colony, Muradabad.

..... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Muradabad.

..... Respondents

(through Sh. A.K. Shrivastava, Advocate)

ORDER

The applicant herein is the widow of one Sh. Shankar Lal, who was working on the post of Gangman in the Railways. He died in harness on 26.07.1991. The grievance of the applicant is that the respondents have denied family pension to her on the ground that her husband had not been screened for regularization before his death.

2. Brief facts of the case are that the applicant was initially engaged on casual basis but was subsequently appointed as a Substitute and granted temporary status w.e.f. 01.01.1983. According to the applicant, he was also

screened and medically examined for the purpose of regularization. However, before the result of the screening could be declared, he died on 26.07.1991. She has further stated that in 2011 she came to know that in identical situation respondents granted family pension to one Smt. Jaywanti. She, therefore, made a representation on 14.11.2011. The respondents rejected the same on 25.05.2012 by observing that Smt. Jaywanti was granted family pension in compliance of the judgment of the Court. Further, she has stated that Hon'ble High Court of Delhi decided one identical case (Smt. Nirmala Devi Vs. UOI & Ors.) in Writ Petition (C)-1956/2012 on 01.04.2013 in which the husband of the petitioner (Smt. Nirmala Devi) had also not been screened. The applicant has argued that her case was squarely covered by this judgment. She has, therefore, filed this O.A. seeking the following relief:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 25.05.2012 (**Annex.A/1**), declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently, pass an order directing the respondents to grant the family pension to the applicant and other legal heirs of Late Sh. Shankar Lal as per rules from the date of death of Late Sh. Shankar Lal with all consequential benefits and arrears with interest.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for granting her family pension from due date as done in the case of Smt. Jaywanti and in the light of recently judgment of Hon'ble High Court in the case of Smt. Nirmala Devi Vs. Union of India in WP(C) No. 1956/2012 decided on 01.04.2013 with all consequential benefits.
- (iii) any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

3. The respondents have filed their reply in which they have opposed the averments made by the applicant. They have stated that Smt. Nirmala Devi and Smt. Jaywanti were granted family pension under court orders.

4. I have heard both sides and have perused the material placed on record. I have gone through the judgment in the case of Smt. Nirmala Devi (supra), which is available at pages 14 to 16 of the paper-book. In this judgment reliance has been placed on the decision of Hon'ble Supreme Court in CA No. 10492/1991 (Prabhavati Devi Vs. UOI & Ors.) dated 16.11.1995. In this case benefit of family pension was granted relying on sub-rule 3(b) of Rule-2311 applicable to Railway Establishment wherein it is provided that family of a temporary railway servant, who dies while in service after serving for not less than a year continuously, shall be eligible for family pension under the provisions of Para-801 of the Manual of Railway Pension Rules.

5. Further, the applicant has produced a copy of judgment of this Tribunal in OA-1689/2007 (Smt. Jaywanti Vs. UOI & Ors.) dated 06.02.2008. In the aforesaid judgment, reliance has been placed on the circular of Railway Board dated 03.07.2002 in which it has been stated that if an employee is screened for the purpose of regularization but dies before the result of the screening could be declared then the administrative delay in declaration of the result shall not come in the way of settlement of dues of the family of the deceased employee, who should be treated as if he had been regularized in service on the date of his death.

6. On being asked as to why there has been delay in filing this O.A., learned counsel for the applicant argued that it was only in 2011 that applicant had come to know of the judgment of this Tribunal in Smt. Jaywanti's case. She made a representation to the respondents on 14.11.2011 for grant of family pension to her. Learned counsel also argued that since this was a case of pension it was a recurring cause of action and hence limitation did not apply in such cases in terms of the judgment of Hon'ble Supreme Court in the case of

M.R. Gupta Vs. **UOI & Ors.**, (1996 AIR 669). He, however, fairly conceded that arrears may be restricted as is the practice in such cases.

7. After considering the arguments of both sides, I am of the opinion that this case is squarely covered by the judgments of Hon'ble High Court of Delhi in the case of Smt. Nirmala Devi (supra) and also of this Tribunal in the case of Smt. Jaywanti (supra). The applicant, therefore, deserves to be considered for grant of family pension. Accordingly, I allow this O.A. and quash the impugned order of the respondents dated 25.05.2012. I further direct them to consider the case of the applicant for grant of family pension to her in the light of the observations made above. She shall also be entitled to payment of arrears, which shall be restricted to period commencing from three years prior to date of filing of this OA. In the facts and circumstances of the case, no interest on delayed payment will be allowed. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/

