

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3109/2015

Order reserved on 21.02.2017
Order pronounced on 06.03.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Smt. Shakuntla Saraswat,
Aged about 56 years,
W/o Late Shri K.N. Saraswat,
R/o Brij Prem Vatika,
Opp. Subzi Mandi, Tundla,
Firozabad (UP).

...Applicant

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Union of India through
the General Manager,
North-Central Railway,
Allahabad.
2. The Divisional Railway Manager,
North-Central Railway,
Allahabad.
3. The Sr. Traction Foreman(S.T.F.R.)
North-Central Railway, Tundla,
Distt. Firozabad (UP).
...Respondents

(By Advocate: Mr. Shailendra Tiwary)

:ORDER:

This is the second round of litigation by the applicant, widow of the deceased Railway employee, claiming her husband's entitlement to pension and hers to family pension on his demise.

1.2 The applicant's husband was initially appointed as a casual labour on 14.10.1974. He was appointed as a Khalasi with temporary status w.e.f. 22.01.1981 in the pay-scale of Rs.196-232. He was regularized w.e.f. 30.11.1993. He was discharged on medical ground on 26.04.1994.

1.3 In the earlier OA No.400/2014 filed by the applicant, this Tribunal, by its order dated 04.02.2014 (Annexure A-5), gave its direction as follows:

"I hereby direct that this OA as well as legal notice dated 13.05.2013 be treated as representation of the applicant and respondents are directed to decide the representation of the applicant within a period of six weeks."

1.4 Her CP NO.356/2014 was closed by the Tribunal on 17.10.2014 (vide Annexure A-6) upon the respondents' submission that they had complied with the Tribunal's aforesaid direction, vide their letter dated 10.09.2014 (Annexure A-1), which is reproduced hereinunder:

"Sub: Implementation of order passed on 04.02.2014 by Hon'ble CAT/PB/New Delhi in OA No.400 of 2014 filed by Smt. Shakuntala Saraswat, W/o Late Shri K.N. Saraswat, Ex. Khalasi under STFR, Tundala Vs. UOI & Others.

In compliance of above order of Hon'ble CAT, I have gone through the contents of OA and legal notice dated 13.05.2013 and have also perused the record placed before me with relevant rules for grant of family pension in favour of Smt. Shakuntala Saraswat, W/o Late Shri K.N. Saraswat, Ex. Khalasi. My observations on the issues are as under:

1. It is evident from records that your husband Shri K.N. Saraswat was appointed as Casual Khalasi in Pay scale Rs.196-232/- w.e.f. 22.01.1981 and was regularized w.e.f. 30.11.1993. It is an admitted fact that on medical ground his services were discharged on 26.04.1994.

2. CHAPTER - III of the Railway Services (Pension) Rules 1993 deals with QUALIFYING SERVICE for the purpose of pension. Rule provides that in respect of a railway servant, half of the temporary service shall be taken into account for calculating pensionary benefits, on absorption in regular employment.
3. It is provided in the rules that 10 years or more qualifying service is required for the pensionary benefits. Rule 69 of RS (Pension) Rules 1993 provides that in the case of a railway servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of service. Accordingly, no pension is payable in such cases and only service gratuity is payable.
4. It is on record that for pensionary benefits, the Qualifying Service of Shri K.N. Saraswat is calculated only 6 years 10 months 0 days, as such he was not entitled for pension under rule 18 of RS (Pension) Rules 1993. Accordingly no pension was admissible to ex-employee.
5. In view of the above facts, since your husband late Shri K.N. Saraswat was having less than 10 years Qualifying Services as such you are not entitled for family pension as per extant rules. No pensionary benefit is admissible to you at this stage.

Accordingly your representation and legal notice are disposed of."

1.5 The instant OA has been filed challenging the afore-quoted letter dated 10.09.2014 (Annexure A-1).

2. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

3. The issue is as to whether the temporary service of the applicant's husband from 22.01.1981 to 30.11.1993 should be counted in full to determine his qualifying service for pension or only half, as done by the respondents.

4. Learned counsel for the applicant has mainly relied on rule 18 of the Railway Services (Pension) Rules 1993 and the judgments of the Andhra Pradesh High Court in **General Manager, South Central Railway Vs. Shaik Abdul Khader** [2004 (2) ATJ 23] and of the Supreme Court in **UOI & Ors. Vs Sarju** [SLP (C) No.20041/2008 disposed of on 30.09.2011]. It has been held therein that the entire period of service of temporary status is required to be treated as pensionable.

5. Therefore, the applicant's husband is held to be entitled to pension and she to family pension. Arrears due to her shall be calculated and paid within six weeks from the date of receipt of a copy of this Order.

6. The OA is allowed accordingly. No order as to costs.

**(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)**

/jk/