

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

OA-3058/2018

New Delhi this the 05th day of September, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

1. Surjo Devi (Aged about 51 years)
Designation Ex Loco Foremen
Group 'C'
W/o Late Sh. Bharat Lal Meena
R/o Vill. Khediya,
Post Zone, Tehsil, Todabhim,
Distt. Karoli (Rajasthan)

... Applicants

(By Advocate : Sh. R K Shukla)

Versus

1. Union of India, through
The General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.

2. The Divisional Railway Manager,
Delhi Division, Northern Railway
D.R.M. Office, Estate Entry Road
Pahar Ganj, New Delhi.

3. The Sr. Divisional Personnel Officer,
D.R.M. Office, Delhi Division
Northern Railway, Estate Entry Road,
Pahar Ganj, New Delhi.

... Respondents

ORDER (ORAL)

Sh. R K Shukla, learned counsel appearing for the applicant pleads that the husband of the applicant was appointed by the respondents on 18.01.1982 and, thereafter, he expired on 29.09.1984. By virtue of this employment at that time, the widow of the applicant is entitled for grant of family pension. The same was agitated before the Tribunal earlier wherein the respondents were directed to consider the representation of the applicant dated 20.09.2016 and pass a reasoned and speaking order. In compliance thereof, the respondents had sought certain documentary proof from the applicant relating to employment. It is seen from order dated 26.04.2017 that on the plea that the applicant was unable to provide the documents, respondents had rejected the claim. The applicant, however, mentioned that the letter wherein the documents were sought, was not received by her and as such she was unable to submit the same.

2. The applicant further drew attention to the judgment passed by the Hon'le Supreme Court in Civil Appeal No. 10492 of 1995, the relevant paras of which are reproduced below :-

X X X X X X

“4. The deceased kept working as a ‘substitute’ till 5.1.87 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. Indubitable, 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 the sub-rule, but have denied to her the family pension. Her claim before the CAT Patna Bench, Patna, was dismissed which has culminated into 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. Ex. Engineer, Southern Railway and anr., (1982 I SCC 645 : {1982 (1) SLR 864(S.C.) and U.O.I. and ors. Vs. Basant Lal and ors, (JT 1992(2) SC 459) : {1992(2) SLR 74 (S.C.) : 1992(2) SPJ.74 (S.C.). 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.

6. We, thus, allow this appeal set aside the impugned orders of the Tribunal and allow the claim to family pension as

projected by the applicant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter is not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment."

Applicant pleaded that his case is similar to above and they are entitled to get family pension.

3. The applicant further pleaded that he will be satisfied if an opportunity is given to him to submit these documents and, thereafter, the respondents may pass a speaking order on the same on merits as was directed in the earlier OA (para 1 supra).
4. In the event, this O.A. is disposed off at admission stage itself, without going into merits, with the direction to the applicant to submit the supporting documents to the respondents within four weeks. On receipt of the same, the respondents are directed to pass a reasoned and speaking order within two months thereafter, duly examining the ratio of above quoted judgment in the instant case.
5. O.A. is disposed off. No costs.

(Pradeep Kumar)
Member (A)

Sarita