

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 451 of 2016

This the 20th day of April, 2018

Hon'ble Dr. Murtaza Ali, Member-J

Smt. Shiv Rani, aged about 58 years, W/o late Shri Devi, R/o Jagannathpuri Colony, Hawaitmau Mawaiya, Lucknow

.....Applicant

By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Divisional Finance Manager, Northern Railway, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri B.B. Tripathi

O R D E R

1. By means of this O.A., the applicant has sought the following main relief(s):-

*“(i) to release the arrears of family pension from the death of deceased employee on 27.9.1982 to the applicant with all consequential benefits with update revision.
(ii) to release the arrears alongwith interest @ 12% per annum from the date of due till the actual date of payment.”*

2. Brief facts giving rise to this Original Application are that the husband of the applicant namely Shri Devi was initially engaged as casual labour w.e.f. 7.6.1975 and he was granted temporary status w.e.f. 16.10.1979. It is averred that after granting temporary status, the husband of the applicant was engaged as Substitute Gangman and was granted all benefits as admissible to a temporary railway servant. The husband of the applicant died in harness on 27.9.1982 leaving behind the widow (applicant) and two daughters. After sad demise of her husband, the applicant preferred an application for compassionate appointment, which was recommended by the respondent no.2 vide order dated 19.11.1985.

Upon consideration, the competent authority i.e. General Manager approved the claim of the applicant for appointment on compassionate ground vide order dated 25.2.1987 and in pursuance thereof, a letter was issued on 27.4.1987 for utilization of services of the applicant as Substitute. Subsequently, the services of the applicant were regularized and presently she is working as Office Khalasi in DRM Office, Lucknow. The applicant approached the authorities concerned for grant of family pension as her husband continuously worked for years together as Substitute Gangman after having temporary status, but the applicant was told that her husband was not yet regularized; therefore, she cannot get the family pension. It is also averred that the Hon'ble Supreme Court in the case of Prabhawati Vs. Union of India & Others has been pleased to hold that the widow of a substitute is entitled to get family pension and the same view has been reiterated by this Tribunal in catena of decisions viz. Kamini Srivastava (O.A. No. 524 of 1997) and Smt. Razia (O.A. no. 280 of 2002), which has also been affirmed by Hon'ble High Court. On coming to know the judgment rendered in the case of Smt. Razia passed by this Tribunal, which has been affirmed by Hon'ble High Court, the applicant preferred a representation to the authorities on 1.5.2016, but no decision has been taken thereon. Hence, this O.A.

3. The respondents, in opposition, have filed a detailed Counter Reply wherein they have stated that the husband of the applicant was initially engaged as casual labour w.e.f. 7.6.1975 and not a railway servant with a further mention that the husband of the applicant was not screened during his life time as a consequence thereof the applicant is not entitled to get family pension. They have also pleaded that the Hon'ble Supreme Court in the case of Union of India Vs. Rabia Bikaner (1997) 6 SCC 580 has been pleased to hold that the widow of casual labour would not be entitled for payment of family pension as per para 2511 of IREM. Besides the above, the respondents also took the plea of limitation by stating that the present O.A. is grossly barred by time as it has been filed after 34 years from the date of cause of action. Lastly, the respondents have stated that the present O.A. is misconceived and as such it is liable to be dismissed.

4. The applicant, in rebuttal, has filed Rejoinder Reply denying the contentions so made in the Counter Reply by reiterating the averments already advanced in the O.A.

5. Supplementary Counter Affidavit has also been filed by the respondents reiterating his earlier stand taken in the Counter Reply by enclosing the judgment and order of Hon'ble High Court dated 8.11.2017 passed in Writ petition No. 37189 of 2007 (Union of India & Others Vs. Smt. Panna Devi & Another). They have further stated that in view of the law laid down by Hon'ble High Court in the cited case, the present O.A. has no merit and the same is liable to be dismissed.

6. I have heard the learned counsel for the parties at length and have also perused the pleadings available on record.

7. The moot question involved in this O.A. is whether the applicant, who is wife of a Substitute, died in harness, entitled for family pension or not? The facts of the case are not in dispute. The only question before this Tribunal for consideration is that the applicant, whose husband died in harness, while working as Substitute, is entitled for family pension. At this juncture, it is relevant to point out here that one Smt. Razia, whose case is identical one, had been denied for grant of family pension, had approached to this Tribunal by filing O.A. no. 280 of 2002 and after detailing all the points, in detail, and also after relying upon the various case laws mentioned therein, this Tribunal by means of judgment and order dated 25.4.2003 has allowed the aforementioned O.A. with a direction to the respondents to process the case of the applicant for payment of family pension and to pay family pension from the date of death of her husband. The said order was challenged by the respondents before Hon'ble High Court by filing Writ petition No. 609 (SB) of 2003, which came to be dismissed vide judgment and order dated 13.4.2016 with fine of Rs. 5000/-. The respondents, through their Supplementary Counter Reply, have also annexed the judgment and order of Hon'ble High Court passed in the case of Union of India & Others Vs. Smt. Panna Devi & Another (Writ petition No. 37189 of 2007) wherein the respondent, therein, was a casual labourer and not a Substitute and further after distinguishing para 5 of the judgment of Hon'ble

Supreme Court passed in the case of Rabia Bikaner has been pleased to observe that the husband of the Prabhawati Devi had worked as casual labour and acquired status of a substitute and then he was working in regular establishment on regular pay scale and allowance and, therefore, she was given benefits of pension with further observation that the case of the respondent, therein, is not akin to the case of Prabhawati Devi. I have carefully gone through the judgment cited by learned counsel for the respondents and the same will not be applicable in the present set of facts as stated hereinbefore.

8. Since the issue raised in this O.A. has already been settled by this Tribunal which has been affirmed by the Hon'ble High Court, hence there is no occasion to deviate another conclusion, which has already been settled.

9. In view of the aforesaid discussion, this O.A. is allowed. The respondents are directed to grant family pension to the applicant and pay the same w.e.f. 27.9.1982 i.e. the date of death of applicant's husband alongwith arrears thereof within a period of six months from the date of communication of this order. No costs.

**(Dr. Murtaza Ali)
Member (J)**

Girish/-