

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No. 612/ 2014

Reserved on 11.01.2018
Pronounced on ____16.01.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

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1. Tilki Devi w/o late Durga Rai, resident of village-Sudhani, P.O.- Sudhani, P.S.-Katihar, District- Katihar.

.....Applicants

By Advocate : Shri JS.K. Bariar

VERSUS

- 1 . The Union of India through the Chairman, Railway Board, New Delhi.
2. The General Manager, North Frontier, Railway, Maligaon, Assam.
3. The General Manager (P) North Frontier, Railway, Maligon, Assam.
4. The Division Railway Manager, N.F. Railway, Katihar.
5. The Senior Divisional Personnel Officer, N.F. Railway, Katihar.
6. The Sectional Engineer/P-Way/BOE/North Divisional Engineer/N.F. Railway, Katihar.

....Respondents

By Advocate : Shri S.K. Raj.

ORDER

Per Jayesh V. Bhairavia, Member (J):

The applicant in this O.A is aggrieved by the letter dated 30.12.2014 issued by the Senior Divisional Personnel Officer, N.F. Railway, Katihar by which the said respondents had decided that no family pension or any other benefits can be sanctioned in favour of Smt. Tilki Devi, widow of late Durga Rai, therefore, the applicant prays for the following relief(s) :-

"[8.i] The applicant humbly prays that the letter dated 30.12.2014 (Annexure -A/8) may be treated illegal and be quashed and set aside.

[8.ii] The applicant humbly prays that respondents may be directed to make payment of family pension and also grant the death cum retiral dues to the applicant with 12% interest.

[8.iii] Any relief/reliefs may be granted to the applicant for ends of justice."

2. The brief facts of the case, as submitted by the applicants, are as below :-

[i] The husband of the applicant namely late Durga Rai was initially appointed as Casual Labour on 18.04.1978 and he was granted the Temporary Status on 16.04.1979 in the pay scale of Rs200-250/-. Husband of the applicant had become Temporary Gangman after granting Temporary Status and after three years being Temporary Status employee on 16.04.1982 he became temporary Group-D employee and availed all the benefits of permanent Group-D employee. The pay scale of late Durga Rai was received at Rs.775-1025 w.e.f. 01.01.1986.

[ii] That, it is admitted position that the husband of the applicant had appeared in the screening test for confirmation against the Group "D" post on 25/26.06.1987 and after successful in the screening test, the husband of the applicant was sent for Medical where he was declared passed in Bee-One Medical category. After screening, name of husband of the applicant and other screened Gangman was recommended for confirmation against Group-D post for approval before competent authority but it took four years to approve the same by the competent authority and in the mean time, unfortunately husband of the applicant died on 29.12.1988. But the name of Durga Rai was deleted from the Regularisation order dated 06.08.1991 though it was the wrong and illegal action to delete the name of Durga Rai resultantly denied the family pension to the applicant.

[iii] That, that the respondents had admitted in para 7 of their written statement that the applicant's husband late Durga Rai had appeared before the screening committee. The recommendation of screening committed was approved by the competent authority on 06.08.1991 whereas the husband of the applicant expired on 29.012.1988. It is further submitted that it is not in dispute that late Durga Rai after successful completion of screening test was sent for medical examination and he was declared passed in B-1 category and his name was recommended for confirmation against group "D" post. However, the respondents took four years to declare the list of

successful workman and before it declared in the year 1991 the husband of the applicant expired on 29.12.1988. Therefore, non-inclusion of applicant's name in the list published after the death of Durga Rai does not allow to snatch away the right of the applicant's husband and the applicant is entitled for family pension. The confirmation of service of other employees who were screened alongwith the late Durga Rai as well as his juniors were confirmed in the service from the date of screening.

[iv] That the applicant had filed a case before this Tribunal bearing OA No. 80 of 2000 with the prayer to grant the family pension to the applicant, this Tribunal vide order dated 20.08.2002 (Annexure A/4 refers) directed the respondents to consider the application of the applicant/representation and to pass speaking order within a period of three months. Thereafter, no order was passed by the respondents and again the applicant herein had filed another OA bearing O.A No. 560/2006 before this Tribunal for family pension and other retiral benefits by treating the husband of the applicant as regular employee from the date of screening as the applicant's husband had passed the screening test for Group "D" employee as he had appeared on 25/26.06.1987 for Screening Test. After hearing the case, this Tribunal had directed the respondents vide order dated 04.07.2012 passed in OA No. 560/2006 to consider the matter of sanction of family pension and other admissible death cum retirement benefits to the applicant, if any junior was approved as regular Gangman from the date of screening. (Annexure A/7 refers).

[v] It is further submitted by the I/c for applicant that by making representation in January 2013 itself to the respondent, the applicant had furnished the name of employees who had been given benefits of regularisation from the date of screening, the applicant had also given the name and their serial nos. of many juniors to the husband of the applicant namely (i) Buchhan Singh serial no. 980, P-way/Katihar (south), (ii) Dinesh Chandra Das, Serial 987, trackman under SSE/P-

Way, Dalkhola (iii) Govind, Trackman under SSE/P-way, Dalkhola 9iv) Vijay Mohanti, Chowkidar under SSE/P-way, Barsoi etc who had been regularised from the date of screening test i.e from 26.06.1987 however, without considering the said fact intentionally on incorrect ground, the respondents have rejected the claim of the applicant and deprived the legitimate right of family pension.

[vi] It is further submitted by the I/c for applicant that gross injustice has been caused to the applicant by the respondents and therefore, the prayer sought in the OA be allowed.

3. The respondents through their written statement have submitted as below :-

[i] The respondents had denied all the contention and averments made by the applicant and further submitted that the applicant's husband late Durga Rai was an unapproved Gangman (CL/CPC) hence family pension is not admissible to the applicant as per extant pension rule and no family pension is provided for Casual Labours under Rule 75 of Railway service (Pension) Rules, 1993. However, keeping a lenient view, applicant was forwarded to General Manager, N.F, Railway, Maligaon, Guwahati, Assam who was the competent authority for consideration of appointment of her son on compassionate ground.

The case was considered by the General Manager and applicant's son Sri Subal Kr. Rai has been appointed to the post of substitute Trackman as Bread Winner of the family. It is further submitted that though applicant had appeared before the screening committee on 26.06.1987 however, prior to declaration of result of the said screening test. The husband of the applicant expired on 29.12.1988. The recommendation of the screening committee with respect to screening test dated 26.06.1987 was approved by the competent authority on 06.08.1991, in which the name of the applicant was not figured and therefore the applicant is not entitled to claim any relief with regard to family pension. The I/c for respondents submits that as per the provisions of Rule 75 of Railway Services

(Pension), Rules 1993, the applicant is not entitled for family pension of her husband, moreover, it is submitted on behalf of the respondents that the every service particular of the husband of the applicant cannot be ascertained at this distance date. The service record of the husband of the applicant is of beyond the specified period of retention of records as per the circular of the respondent department.

4. L/c for applicant has filed rejoinder to the written statement and had reiterated the earlier submissions. Additionally, l/c for applicant submits that the order dated 30.12.2013 of the respondent is wrong, misleading and erroneous on grounds that many juniors to the deceased employee were given regularisation from the date of screening test but the husband of the applicant has been denied. The respondents has not controverted the facts and submissions stated in para 4.20 & 4.21 of the OA which pertains to approval of others and juniors to the husband of the applicant and they were declared regular Gangman with effect from the date of screening i.e 26.06.1987. Therefore, the impugned order is bad and contrary to the direction issued by this Tribunal in O.A No. 560 of 2006 vide order dated 04.07.2012.

The l/c for applicant placed reliance on the judgement passed by the Hon'ble Patna High Court on 26.08.2002 in the case of Meena Devi Vs UOI & Ors CWJC No. 5386/2002 reported in 2002(4) PLJR 671 and the judgment dated 07.09.2017 passed by this Tribunal in O.A 832/2013 dated 07.09.2017, and submitted that the husband of the applicant had rendered service more than 10 years and he was screened, the respondent railway department could not publish the result for over 4 years. The lapse on the part of the respondents for causing delay in considering the recommendation of the screening committee cannot be attributable to the applicant. Therefore, the case of the applicant is squarely covered as per the cited judgement wherein benefit of family pension in identical situation had been granted by the Hon'ble High court of Patna as well as by this Tribunal.(Annexure A/10 and A/11 of the rejoinder refer).

5. I have heard the learned counsel for both the parties and perused the records of the case. It reveals from the records that the husband of the applicant

i.e late Durga Rai ex. Gangman, was engaged as Casual Labour on 18.04.1978 and he attained temporary status on 16.04.1979. The screening test for regularisation of the service of said late Durga Rai was held on 26.06.1987. It is not in dispute that after undergoing screening successfully, he was sent for medical test. Before the approval of recommendation of the screening committee with respect to screening test held on 26.06.1987, unfortunately the said Durga Rai expired on 29.12.1988. The competent authority approved the recommendation of the screening committee referred hereinabove on 06.08.1991.

This Tribunal vide its order dated 04.07.2012 in OA 560/2006 directed the respondents to reconsider the claim of the applicant for grant of family pension. As per approval letter dated 06.08.1991, if others or any of the juniors of the husband of the applicant were approved as regular Gangman with effect from the date of screening, i.e 26.06.1987 or any date prior to the death of husband of the applicant, the same benefit of pay and allowances be given to the husband of the applicant.

6. It is apt to note that specific details has been provided by the applicant with regard to the juniors to the husband of the applicant and others, who were screened and approved as regular Gangman. This fact has been not denied or controverted by the respondents in their written statement as well as during the course of arguments. Though, this Tribunal has specifically put the query to the counsel for respondents in this regard, however, the respondents have failed to controvert the said fact. Therefore, it is clear that the claim of the applicant has not been considered in its true spirit by the respondents and they have deprived the applicant of the benefit of family pension.

7. The contention raised by the respondents that as per the Rule 75 of Railway Services (Pension), Rules 1993, the casual labourers are not entitled for family pension. This submission is not tenable in view of the judgement passed by the Hon'ble High Court of Patna and order passed by this Tribunal as referred hereinabove (Annexure A/10 & A/11). The respondents in its impugned decision observed that all the relevant documents of the husband of the applicant has been considered and thereafter denied the claim of applicant, therefore, it is not correct

on the part of the respondents to state that relevant service records of the husband of the applicant is not available, this lame excuse is not appreciable and acceptable.

The impugned decision dated 30.12 2013 (Annexure A/8) is in violation of pension rules itself, the husband of the applicant had rendered service for more than 10 years as Gangman, it needs to be noted here that he had successfully cleared the screening test and was sent for the medical test in 1987, and thereafter also he had continuously worked till he died in harness. It was an administrative failure on the part of the respondents to declare the result of the recommendations made by the screening committee for the screening test held in 1987 and contrary to the facts stated hereinabove as well as the findings arrived at by the respondents cannot be acceptable in view of the law settled by the Hon'ble Apex Court as well as Hon'ble High Court of Patna. The identically situated employee had been regularised as Gangman on the basis of screening test held in the year 1987 therefore, the respondents ought to have granted the benefit of family pension and other retirement benefit to the legal heirs i.e applicant herein. This Tribunal has no other option left but to quash and set aside the impugned order dated 30.12.2013 passed by the respondents and accordingly the same is quashed and set aside.

8. In conclusion, the O.A is allowed. The respondents are directed to grant family pension to the applicant treating the husband of the applicant as a regular Gangman with effect from the date of his screening test held on 26.6.1987, which were duly approved by the authority in the case of identically situated other Gangmen. The whole exercise must be completed within three months from the date of receipt of copy of this order.

[Jayesh V. Bhairavia]
Member(J)

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