

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD
(Circuit Bench at Nainital)**

Allahabad, this the _____ day of _____, 2019

Present :

Hon'ble Mr. Rakesh Sagar Jain, Member-J

Original Application No.331/00402/2004

Smt. Deoki Devi W/o Late Devi Dutt R/o Village – Koltolari, P.O. Deonai, Tehsil and District - Bageshwar.

.....Applicant.

By Advocate –Shri Chitrarth Kandpal

V E R S U S

1. Union of India through Chairman, Railway Board, New Delhi.
2. The General Manager, Northern Railway, Head Quarter Office, Kashmere Gate, Delhi, New Delhi -110006.
3. Senior Personal Officer/COM for Administrative Officer/Com, Head Quarter Office, Kashmere Gate, Delhi.
4. The Deputy Chief Engineer, I.O.W./H.Q./M.T.P./R.-T.K.J., New Delhi.

..... Respondents.

By Advocate : Shri P.K. Rai

O R D E R

The applicant Smt. Deoki Devi has filed this O.A. under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

- “(i) To set aside the order dated 27.03.2003 (10.4.2003) passed by General Manager, Northern Railway.***
- (ii) Any suitable order or direction to the respondents to appoint the petitioner in the class IV post in the railway department on the***

basis of Dying-in-Harness rules as petitioner's husband expired on 15.06.1990 during service in the rail accident.

(iii) Issue any other suitable order or direction for granting the family pension in the favour of the petitioner.

(iv) Award the cost of the petition to the petitioner."

2. Case of Smt. Deoki Devi is that her husband Devi Dutt while engaged as daily casual labour khalasi was made temporary Khalasi from 01.01.1984 and during his service he expired on 15.06.1990 in a rail accident. Applicant has sought various reliefs but during the final arguments, learned counsel for applicant confined his arguments to seek the relief of Family pension and also quash order dated 27.03.2003 (10.04.2003) passed by General Manager, Northern Railway whereby applicant's claim for family pension was rejected.

3. In the counter affidavit, respondents admit that husband of applicant was appointed as casual labour Khalasi on 15.09.1980 in the respondent-department and was granted temporary status on 01.01.1984 and expired on 15.06.1990. The sum of Rs.5475/- towards gratuity and Rs.1036/- towards leave encashment was paid to the applicant.

4. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record. During the arguments, the learned counsels have reiterated pleas raised by them in respective pleadings.

5. The limited question in dispute is as to whether applicant is entitled to family pension on the death of her husband while in service of respondents-department where while working as casual labourer, being appointed on 15.09.1980, he was granted temporary status.

6. Learned counsel for applicant while seeking the relief of family pension relied upon *Prabhavati Devi v/s Union of India*, AIR 1996 SC 752 in support of his case.

7. In *Prabhavati Devi v/s Union of India*, AIR 1996 SC 752, the Hon'ble Apex Court while allowing the claim of family pension to the applicant-wife of deceased labourer held that :

"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. Indubitably, 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 this sub-rule, but have denied to her the family pension. Her claim before the C A T, Patna Bench, Patna, was dismissed which has culminated into this appeal.

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 Vs. Ex. Engineer, Southern Railway and Anr. (1982 1 SCC 645 and U.O.I. and Ors Vs. Basant Lal and Ors. (JT 1992 (2) SC 459). 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."

8. In view of the facts of the case and settled law laid down by the Hon'ble Apex Court, the impugned order dated 10.04.2003 (27.03.2003) passed by General Manager to the extent of rejection of prayer of applicant for grant of family pension is set aside.

9. Allowing the O.A. regarding her prayer for relief of grant of Family pension, respondents are directed to calculate the pension and issue the pension and as also the arrears to the applicant and also pay interest at the rate of 7 % per annum from the date the pension was due till payment. This exercise shall be carried out within a period of One month from the date of receipt of the copy of this Order.

10. O.A. is accordingly disposed of. No order as to costs.

Member-J

RKM/