

**Central Administrative Tribunal
Principal Bench**

OA No. 1469/2016

Order Reserved on: 21.08.2019
Order Pronounced on: 22.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Sumitra Devi,
Widow of Late Satish Chand,
R/o H.No.111, Kavita Colony,
Nangloi, New Delhi-110041

- Applicant

(By Advocate: Mr. SM Dalal)

VERSUS

1. General Manager,
North Western Railway,
Jaipur, PIN-302017

2. Division Railway Manager,
Jaipur Division
North Western Railway,
Jaipur, Rajasthan - Respondents

(By Advocate: Mr. Satpal Singh)

ORDER

The applicant has filed the present OA, seeking the following reliefs:-

- “(a) Direct the respondents to grant Family Pension to the applicant with effect from 15 October, 2013 with interest @12% PA over the arrears.

- (b) Pass any such other or further order as this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case.”

2. The applicant, in the present OA, is aggrieved by the impugned order dated 18.07.2014 passed by the respondent no.2 whereby his application dated 06.05.2014 seeking compassionate appointment and payment of final settlement amount was rejected giving reasons that her late husband had not been treated as regular employee due to not fulfilling the conditions relating to service as per sub para 4 of Para 2 of Chapter-1 of Railway Service Pension Rules 1993 (Two years probation period and for not fulfilling the condition of Service Bond of three years). The applicant is further aggrieved by the impugned order dated 24.11.2015 whereby it was informed that since her late husband, who was appointed under the Sports Quota, had not completed the probation of two years, his services cannot be treated as regular as per the recruitment rules under the Sports Quota. The applicant has challenged the aforesaid orders on the grounds that she is entitled to family pension in terms of Rule 75(2)(a) and (b) of Family Pension Scheme for Railway Servants 1964, as her deceased husband was medically fit prior to his appointment and died after completion of more than one year's of continuous

service. The applicant, in reply to the contention of the respondent no.2 that her husband was not a regular employee as he did not meet the conditions given in Sub Para 4 of Para 2 of Chapter-1 of the Railway Pension Rules, 1993, has submitted that the late husband of the applicant had served for over 23 years of service and was a regular employee and was paid regular salary. She has pleaded that probation is only for 2 years and if service of the employee is not terminated after completion of two years, he is deemed to have been a regular employee. She has further pleaded that her late husband is also deemed to have completed condition of 3 years service as required in service bond. Had he not completed the said condition, the services of her late husband would have been terminated. She has thus submitted that the impugned orders are arbitrary and contrary to statutory provisions and hence are liable to be quashed.

3. The respondents, while contesting the OA, have filed their CA. They have contended that the late husband of the applicant, who was appointed on the post of Bhisti on probation basis under sports quota in the respondent department on 30.01.1990, had expired on 15.10.2013 and had only worked for total 336 days

during his about 23 years service career, whereas two year probation period were required to be completed for regularization on the said post which her late husband had not completed, as he remained authorized absent from 04.02.1991 to 05.05.2006 and the said period was treated as 'break in service' vide order dated 05.05.2006 and thereafter also, he remained unauthorized absent about 6 years continuously resulting in non-completion of prescribed two years of probation period as well as three years service bond till his death. As such, the applicant is not entitled for seeking family pension and compassionate ground appointment benefits as per rules.

4. After hearing both the parties and perusing the record, it is quite clear that the late husband of the applicant was recruited in the service on 30.01.1990 and the period from 04.02.1991 to 05.05.2006 was treated as break in service by the respondents vide their order dated 05.05.2006. However, for the period from 2007 till the death of the late husband of the applicant, i.e., 15.10.2013, the respondents have not been able to produce on record any document or material to establish that the late husband of the applicant had remained unauthorized absence, as he

was never issued any show cause notice to this effect nor have they launched any enquiry against her late husband for the aforesaid period. Now, after the death of her late husband and even without proving the allegation of unauthorized absence, the claim of the respondents that the late husband of the applicant had remained unauthorizedly absent and hence not liable to get benefits of service is not tenable in the eyes of law. Hence, in view of the same, the respondents are directed to examine the case of the applicant for family pension and other terminal benefits in terms of Rule 75(2)(a) and (b) of Family Pension Scheme for Railway Servants and pass the detailed and speaking order thereon within a period of 60 days of receipt of a certified copy of this order and provide family pension benefits, as due, within 30 days thereafter.

5. With the above directions, the OA is allowed. No order as to costs.

(Nita Chowdhury)
Member (A)

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