

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA
OA 1225 of 2013**

LIBRARY

Reserved on: 18/08/2016
Date of Order: 22/9/2016

C O R A M

HON'BLE MRS. URMITA DATTA [SEN], JUDICIAL MEMBER

1. Smt. Belmuni Soren, W/o Late Jagai, Ex-Gangman under the P.W.I., Eastern Railway, Gurap, Dist. Hoogley, PIN- 712303.
2. Dilip Soren, S/o Late Jagain

Both are residing at Village- Dastanpur, Post Office- Keotara, Police Station-Jamalpur, District- Burdwan, PIN- 713166.

..... Applicants.

By Advocate : Mr. B.S. Roy

-Versus-

1. The Union of India represented by the General Manager, Eastern Railway, "Fairlie Place", 17, N.S. Road, Kolkata- 700001.
2. The Chairman, Railway Board, "Rail Bhavan" Rafique Marg, New Delhi:- 110001.
3. The General Manager, Eastern Railway, Fairlie Place, 17, N.S. Road, Kolkata- 700001.
4. The Chief Personnel Officer, Eastern Railway, 17, N.S. Road, Kolkata- 700001.
5. The Divisional Railway Manager (Settlement Section), Eastern Railway, Howrah- 711101.
6. The Divisional Personnel Officer, Eastern Railway, Howrah- 711101.
7. The Senior Divisional Accounts Officer (Pension), Eastern Railway, Howrah-711101.
8. The Senior Section Engineer (Permanent Way Inspector), Eastern Railway, Gurap, Post Office – Balidaha, Police Station- Dhaniakhali, District- Hooghly, PIN- 712303.

..... Respondents.

By Advocate :- Mr. S.K. Das

10.

ORDER

Per Mrs. Urmita Datta (Sen), Judicial Member:- This application has been filed by the applicants (two in number) seeking the following reliefs :-

- [i] Family pension shall be granted and be paid to the applicant no. 1 as per Railway Services (Pension) Rules, 1993.
- [ii] Death-cum-Retirement Gratuity shall be paid to the applicants as per Railway Services (Pension) Rules, 1993.
- [iii] Interim Relief as per rules and all other monetary benefits arising out of the death of Jagai, the husband of the applicant no. 1 shall be paid to the applicants.
- [iv] All arrear family pensions, death-cum-retirement gratuity and all other monetary benefits arising out of the death of Jagai, Ex-Gangman, as per prayers (a0, (b) and (c) above shall be paid to the applicants within a time bound period as Your Lordships may deem fit and proper;
- [v] Immediate relief as per Railway Board's order dated 21.04.1973.
- [vi] Interest at the rate of 18% per annum annually compounded on all arrears in terms of prayer [d] above shall be paid to the applicants and such interest to be calculated from the date of death of said Jagai, i.e. since when amount accrues due to the actual date of payment.
- [vii] Any other or further order or orders and/or direction or directions as Your Lordships may deem fit and proper; and
- [viii] Costs.

2. As per the applicants, the husband of applicant no. 1 Late Shri Jagai entered in the Railway Service on 26.03.1979 and was posted as a Gangman under Identity No. 209317. However, he died on 01.09.1986. Therefore, pension papers were sent to the authorities on 09.02.1987 (Annexure A/3). However, the family was paid an amount of 1756/- as payment towards Provident Fund but

112

neither family pension nor any retiral benefits was granted to them.

Thereafter, the applicants sent a Lawyer's Notice dated 22.08.2002

(Annexure A/4). However, vide order dated 19.09.2002 (Annexure

A/5) the claim of the applicants was rejected on the ground that Late

Jagai was a staff of temporary status and he died in the year 1986 as

a Decasualised Gangman. Therefore, he was not entitled to get any

pensionary benefits. Being aggrieved, the applicants have preferred

an appeal before the GM, Eastern Railway on 25.10.2002 (Annexure

A/6). As nothing was done, the applicants filed OA No. 455/2003

before this Tribunal. However, the applicants withdrew the said on

11.02.2005 on the basis of assurance given by the respondents.

4. However, nothing was done and ultimately they filed an application under RTI on 20.02.2013 (Annexure A/7). Since no reply was received by them, they have filed this application in the year 2013.

3. The respondents have filed written statement wherein

they have raised the preliminary issue of limitation and stated that

this OA is hopelessly barred by limitation. They have also stated that

Late Jagai was appointed as daily rated Casual Gangman on

26.03.1979, who died on 01.09.1986. However, he was never

regularized. As a casual Gangman, he was only entitled for PF, which

was provided to Smt. Belmuni Soren, wife of Late Jagai, i.e. applicant

no. 1 on 02.03.1987. According to the respondents, since the

deceased husband of applicant no. 1 was not regularized being not a

regular employee, he was not entitled for any pensionary benefit.

11.

4. The applicant have filed rejoinder wherein they have more or less reiterated the submissions as made in the OA. As per the applicants since Late Jagai was provided with Identity Card therefore he should be treated as a Railway servant. Moreover, the scheme of decasualization was with regard to the Artisans, i.e. a mechanic and workman and the casual Gangmen do not fall in the category of Artisan in railway service.

5. I have heard both the parties and perused the records.

6. It is admitted fact that the husband of applicant no. 1 Late Jagai died in the year 1986 without being regularized in the service. Since only regular employees are entitled to get pensionary benefit and in the instant case Late Jagai was never regularized therefore there is no question of providing family pension to the wife of the deceased. Moreover, the applicants could not establish the right of the deceased casual employee, who died in the year 1986 and their claim was rejected in the year 2002 which they had challenged before this Tribunal in OA No 455/2003. According to the applicants they withdrew the same on 11.02.2005 and thereafter they have filed this application after a long gap of 8 years on self same cause of action. Therefore, the application is not only hopelessly barred by limitation but also by res-judicata. Accordingly, I do not find any reason to interfere in this matter. The OA is accordingly dismissed. No order as to costs.

[Urmita Datta(Sen)]
Judicial Member

4. Srk.