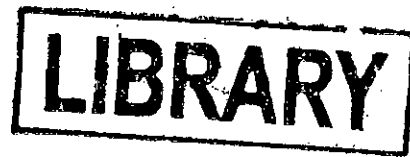


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00381/2014

Date of order : 28.9.2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

RAHIMAN BIBI

VS

UNION OF INDIA & ORS.

For the applicant : Mr. A. Mookherjee, counsel

For the respondents : Mr. A. K. Guha, counsel

O R D E R

This application has been filed seeking release of family pension with interest @ 20% due to accidental tragic death of the employee Kayam ex-CPC Gangman in Eastern Railway while on duty on 5.12.90.

2. The respondents have opposed the claim on the ground that the case is 24 years' old and the records could not be traced out despite intense search. However, they have stated that the employee expired at the age of 41 years after rendering 6 years 2 months and 21 days of service as CPC Gangman. In terms of Railway Board's order dated 21./10.65 circulated under CPO Srl. No. 6179 dated 4.11.65 to be eligible for family pension the employee had to render at least one year continuous service from the date he was absorbed against a regular temporary post and in terms of RBE 14/94 half the period of service as casual labour after attainment of temporary status if followed by absorption as regular Railway employee would count for pensionary benefits.

3. The respondents have categorically submitted that Late Kayam was working as CPC Gangman and not absorbed against any regular vacancy before his death. As such family pension was not admissible in his case. His son Sri Tesan was provisionally appointed as casual labour under PWI (Station) on compassionate ground with the approval of the competent authority and the

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widow was paid Provident Fund amount of Rs.72,548/- as compensation to an accident victim.

4. A rejoinder has been preferred reiterating the submissions made in the OA.

5. During the course of hearing Id. Counsel for the applicant cited a decision rendered in **Prabhavati Devi -vs- UOI & Ors. [AIR 1996 SC 752]** where the deceased was working as a substitute when he died and the Hon'ble Court found Rule 2318 of Rules applicable to Railway Establishment provided 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.

There the Hon'ble Apex Court observed and held as under :

"4.Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he become 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.

5. 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 v. Ex. Engineer, Southern Railway and Anr.* (1982 1 SCC 645 and *U.O.I and Ors. v. 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.

6. We, thus allow this appeal, set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment."

6. We have heard Id. Counsel for the parties and perused the materials on record.

7. Since the decision rendered to in **Prabhavati Devi** (supra) related to a substitute working against a permanent post while the present case refers to a CPC Gangman and as no documents have been brought to the fore which would suggest that the employee served as a substitute and as such would be governed by the cited decision, the respondents are directed to re-consider the matter in terms of **Prabhavati Devi** (supra) ^{on the basis of available records &} and pass appropriate reasoned and speaking order within two months from the date of receipt of the copy of this order.

8. The OA is accordingly disposed of. No order is passed as to costs.

(R. BANDYOPADHYAY)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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