CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00917/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

GENURANI MUKHERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel
Mr.B.C.Deb, counsel

For the respondents : Mr.S.K.Das, counsel

Order on : 19.07.2016

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The employee who had put in a service of 27 years 11 months and 26 days in the first spell of his service form 21.5.45 to 17.5.73 as Switchman in Howrah Division and thereafter a spell of 8 years 6 months 27 days from 30.7.74 to 31.5.83 has been denied pension and therefore applicant, the widow of the employee Late Abani Mukherjee has been denied family pension on the ground that the first spell of 27 years 11 months 26 days was not pensionable as the employee had not opted for pension scheme and the second spell fell short of 10 years qualifying service reckonable for pension. Her claim has been rejected on 16.4.15 which is under challenge in the present OA.

3. Ld. Counsel for the applicant argued that the employer could not have disallowed family pension to the widow of the deceased Railway employee who had put in more than 36 years of service, rather they ought to have allowed the shortfall to be reckoned from earlier about 28 years of regular service, to grant family pension to the poor widow. Ld. Counsel would also strenuously urge

that it was incumbent upon the Railways to give wide publicity to notice inviting its employees to opt for pension. The employee in that occasion would have amply opted as such. He was rather deprived of exercising any fruitable option and therefore it should be deemed that the employee had never opted for gratuity. On that score ld. Counsel would rely upon the decision of Hon'ble Apex Court in ***UOI & Ors. -vs- D.R.R. Sastri [1997 SC SLJ pg 148]*** rendered in a case where the respondent had served 22 years in Railway and belatedly opted for liberalised pension scheme. The Tribunal found that option was not brought to his knowledge despite clear statement of the Railway Board's letter and further another similarly situated employee was allowed to exercise option belatedly and granted pensionary benefits. That view was affirmed in the following words, by the Hon'ble Apex Court :

> *"The respondent had served for about 22 years and he should not be deprived of the pensionary benefit when the government itself had come forward with the liberalised Pension Scheme and gave option to the persons already retired to come over to the pension scheme."*

4. Per contra ld. Counsel for the respondents, vociferously objecting to the claim submitted that the widow was paid service gratuity in lieu of pension as per Rule 102 of Manual of Railway Pension Rules, 1950.

Ld. Counsel would submit that the applicant was receiving a service gratuity of almost Rs.3000/- per month.

5. The ld. Counsels were heard and materials on record were perused.

6. It could be noted that in the reply the respondents have not denied that if the employee had completed 10 years of service in the second spell, he would have been eligible for pension and accordingly the widow would have been eligible for family pension, but strangely enough ld. Counsel for the respondents during the course of arguments while inviting my attention to the temporary appointment letter dated 19.10.74, vehemently opposed the claim for family pension on the ground that the second spell of service was not pensionable as the employee was granted appointment against a temporary post of Switchman. He submitted that the applicant was appointed on probation for one year and was not eligible to earn pension or any benefit

under State Railway Provident Fund, Gratuity Rule or Absenting Allowance in terms of his appointment letter.

7. Ld. Counsel would further vociferously argue that since the employee was on temporary service such service did not bestow upon him a right to seek pension, which contention however, ran contra to their pleadings in the reply that the employee could not be granted pension since the second spell of service fell short of required period of 10 years qualifying service for pension. Further, the respondents have emphatically admitted in the impugned order the following : (extracted with supplied emphasis for clarity)

> *"In the above mentioned 2nd spell of service, although he was governed under the pension scheme but his qualifying service fall short to 10 years for entitlement of grant of pension and accordingly service gratuity in lieu of pension was paid to him as per extent Railway rules. His qualifying service in the 2nd spell of service was 8 Yrs 6 months 27 days."*

Therefore both the reply as well as the speaking order expressly indicated that the second spell was pensionable.

8. That apart the appointment letter of the applicant itself would manifest that his probation period was only for one year. Nothing was placed on record to demonstrate that the employee was never regularised till the date of his superannuation or that he was all along on probation for eight long years, which situation itself could neither be visualised nor comprehended.

9. The impugned order further revealed that not only family pension but also compassionate appointment was denied to the son of the employee as it was found not permissible as per extent Railway rules for compassionate appointment to a ward of an employee "who had retired from the Railway service voluntarily on 17.5.1973 in the 1st spell of service and retired on re-appointment under age limit on 31.5.1983 in 2nd spell".

Therefore this is a shocking case where despite having rendered service for 36 long years under the Railways, the family of the employee was not considered for family pension, which in my considered opinion was an outcome of sheer apathy and inhuman attitude of the respondents towards its employee.

10. In order to find out the provisions governing the family pension, the Pension Rules of the respondents were delved into. Para 101 of MOPR reads as under :

> *"101.(1) The retirement benefits under these rules for a permanent Railway servant comprise of two elements viz:-*
> *i)(a) ordinary gratuity/pension; and*
> *(b) death-cum-retirement gratuity; and*
> *(ii) Family Pension.*
>
> *The benefits are admissible to all permanent Railway servants except those who are removed or dismissed from service or resign from it before completion of 30 years' qualifying service.*
>
> *(2) In the case of a temporary Railway servant the benefits comprise–*
> *(a) if he quit service on account of superannuation; invalidation or reduction of establishment – a terminal gratuity;*
> *(b) if he dies while in service –*
> *(i) a death-gratuity to his family; and*
> *(ii) a family pension if, at the time of death, the employee had completed one year's continuous (qualifying) service.*
>
> *102. Ordinary gratuity/pension becomes due on quitting service on account of any one of the following reasons :*
> *a) abolition of post*
> *b) medical invalidation*
> *c) retirement on completion of 30 years' qualifying service*
> *d) superannuation.*
>
> *No ordinary gratuity/pension is, however, payable if the Railway servant dies while in service. A permanent Railway servant who quits service before completion of 10 years' qualifying service is given an ordinary gratuity but no pension. Pension is granted only if a permanent Railway servant quits service after completion of at least 10 years' qualifying service."*

A cursory glance at the provisions would reveal that family pension is allowed to a widow of a permanent employee who retires on superannuation with at least 10 years service as also to a widow of a temporary railway servant who has put in only one year of qualifying service along with DCRG; whereas a widow of a temporary employee, who dies after superannuation with less than 10 years service, is denied family pension. She is entitled to get only a meagre terminal gratuity whereas the position is otherwise if the employee dies while in harness even one day prior to his superannuation and even on temporary service. Such discrimination to widows, in my considered opinion, is illogical and fallacious, in as much as a widow of a temporary employee who dies in harness with only one year service is brought on par with widow of a

permanent employee who retires on superannuation enjoying his full service benefits etc.

11. The employee, as could be discerned, was appointed as a Switchman. Qualifying Service in terms of MOPR, is as under :-

> *"104(1) **Length of qualifying service** – Continuous temporary or officiating service under the Government of India followed without interruption by confirmation in the same or any other post, counts in full as qualifying service, except –*
> *(i) periods of temporary or officiating service in a non-pensionable establishment;*
> *(ii) periods of casual/daily-rated service and periods of service of casual employees treated as temporary on completion of six months' continuous service until they are absorbed against regular temporary/permanent posts; and*
> *(iii) periods of service in a post paid from contingencies other than those indicated in Para 409(ii)."*

As per rules temporary or officiating service followed by confirmation counts, if not rendered in a non-pensionable establishment. The respondents have failed to show that the post the employee was holding in the second spell, fell in a non-pensionable establishment, or that he was never confirmed till his superannuation as already noticed supra.

12. At this juncture what kept lurking in my mind was that, if the object of providing family pension to the widow of a deceased Railway employee upon his death, while during service or after his retirement, is to provide some succour to the widow and the family members left behind, should the present applicant, whose husband has rendered 36 years of unblemished service, be denied family pension? Will it not be an inhuman treatment to her? If a widow of a temporary railway servant can earn pension with only one completed year of continuous service of her husband why should the present widow be deprived of family pension when her husband has put in 36 years of service.

Then the reasoning contrived by the respondents in denying family pension to the present widow, would defeat the very purpose for which the family pension scheme was introduced. It would be highly discriminatory on the part of the respondents to deny her family pension, only because her husband who has rendered almost 28 years unblemished service in the first

spell, did not complete 10 years (9 years 9 months – to be more precise) service in the second spell or did not die within one year or during the second spell.

13. It is not the case of the respondents that the widow was paid death benefits adequate for her sustenance. Therefore in my considered opinion such a widow should never be deprived of her means of sustenance i.e. her family pension. Even if the rules do not provide for helpless and hapless widows like her, they should be provided some relief.

14. In such view of the matter, considering this to be a special case due to its peculiar facts and circumstances, it is ordered that the respondents would consider the case sympathetically so that the shortfall of 10 years of the second spell is made good from the first spell or the first spell of about 28 years itself is considered pensionable enuring family pension to the widow.

15. Appropriate orders be passed by two months from the date of communication of this order.

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

(BIDISHA BANERJEE)
MEMBER (J)

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