

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.16530 of 2014

Date of decision : 21.02.2017

Mrs. Alka Sharma

...Petitioner

Versus

Union of India & Ors.

...Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. D.R.Sharma, Advocate for the Petitioner.

Mr. Karamjit Verma, Advocate for Respondent Nos.1 to 3.

SUDIP AHLUWALIA, J.

The Petitioner seeks quashing of the impugned Order dated 16.9.2013 (Annexure P-4) vide which, the Ld. Central Administrative Tribunal, Chandigarh Bench, Chandigarh, had dismissed her Original Application No.595-PB-2012 in which, she had sought direction upon the Respondent Nos. 1 to 3 to treat the services of her late husband as regular/permanent, rendered with effect from 30.7.1992 to 14.12.2006, to

release his pensionary and retiral benefits, and to release her family pension including arrears, death-cum-retirement gratuity with interest etc.

2. Her case is that her late husband namely Pardeep Sharma had initially worked as temporary Booking Clerk in the Railway Reservation Office, Ludhiana for seven months with intermittent breaks between 4.5.1985 to 12.8.1986. Thereafter he was engaged as a Booking Clerk on temporary basis on 30.7.1992 along with 12 other persons. He duly passed the requisite medical examination for such appointment on 5.8.1992. In 1995, he was transferred at his own request. In August, 1999 the Railway Board decided to regularize the Mobile Booking Clerks (MBCs) working in the Northern Railway, vide its letter dated 17.2.2000. The Senior Divisional Personnel Officer, Northern Railway, Ferozepur directed the Petitioner's husband and 11 other MBCs to appear at the Written Test for that purpose, as he was otherwise eligible for regularization, having put in actual work exceeding 891 working days for that purpose. He qualified the Written Test held on 11.3.2000 and was intimated by Respondent No. 3 vide letter dated 30.6.2000 (Annexure A-4) that he along with 11 others would be called for interview to be held in near future. However, he never received any such interview call for a long time on account of which, he wrote a letter on 9.12.2000 (Annexure A-5) to Respondent No. 5 to do the needful regarding interview, but received no response. Subsequently, the petitioner's husband while on Railway Doctor Sick-List since 6.8.2001 was required by Respondent No. 3 vide letter dated 22.8.2001 (Annexure A-6) through the Station Superintendent, Ludhiana to be spared for Written Test on 15.9.2001, but he was not actually informed about the same. Thereafter,

another Written Test for regularization of the services of MBCs was scheduled for 26.10.2002, but again the petitioner's husband was not informed about the same. He therefore, on 6.5.2004 vide his letter (Annexure A-7) requested the Respondent No. 3 to give him a chance for screening/written test as he was not at fault for not appearing in the same, but again received no response. He died on 14.12.2006, but four days later, the Respondent No. 3 issued the letter dated 18.12.2006 (Annexure A-8) again asking the Station Superintendent to spare him and seven others for Written Test to be held on 6.1.2007, even though he was already dead.

3. Further according to the Petitioner, her husband was to retire in the year 2020 on attaining the superannuation age of 60 years and had at the time of his death completed more than 14 years service with the Respondent/Department as Mobile Booking Clerk. She therefore, approached the Central Administrative Tribunal with her Original Application seeking direction upon the Respondents to treat the services of her husband as permanent from 30.7.1992 to 14.12.2006 and to release pensionary benefits and family pension in her favour, after her claim in this regard was rejected by the Railway Authorities vide Order dated 27.11.2013 (Annexure P-6).

4. The Ld. Tribunal however, rejected the Petitioner's application by observing inter-alia -

“13. It is apparent from the record that the initial appointment of the deceased employee was made through notice dated 30.7.1992 on temporary basis and it was clarified in the notice itself that

regularization of the appointed persons would be effected after completion of 3 years continuous service by “positive act of selection”. The husband of the applicant had three opportunities to clear the selection process as the written test was scheduled in 2000, 2001 and 2002, but he did not succeed. The deceased employee had made a request in 2004 to the authorities for scheduling the screening process once again and this was conducted in 2006, but just before the date announced for the written test, Sh. Pardeep Kumar died. The Railway Services (Pension) Rules regarding qualifying service for pension purposes are clear and in the case of temporary employees it is stated that the service put in on temporary basis will be counted in full in respect of those employees who have subsequently been appointed on substantive post. Since at the time of his death the applicant was still working in temporary capacity and his services had not been regularized, he was ineligible for pension and consequently his family cannot get the benefit of family pension. This O.A. is hence rejected.”

(Emphasis added)

5. From the highlighted extracts of the impugned Order as seen above, it becomes clear that the Tribunal came to its final decision on the premise that the deceased employee had three opportunities to clear the Written Test scheduled in 2000, 2001 and 2002, but he did not succeed and that he had made a request in 2004 to the Authorities for scheduling the screening process once again and this was conducted in 2006 but he died just before the date for Written Test was announced. The Tribunal however, has clearly ignored the contention of the Petitioner that her deceased husband after having qualified the written examination in 2000 was never interviewed in terms of the intimation conveyed, vide letter dated 30.6.2000 (Annexure A-4) that he along with the other employees, who had similarly qualified in the written examination, would be called for interview to be held in near future. No response to his request for interview/doing the

needful made over five months later on 9.12.2000 vide Annexure A-5, was also forthcoming at any stage. It was also the specific allegation that no intimation regarding fresh appearance in the subsequent Written Test scheduled on 15.9.2001 and 26.10.2002 was ever communicated to the deceased employee on account of which he cannot be faulted for having not appeared in those Tests. In our view, the Tribunal's approach in not taking cognizance of the specific allegations made in the Original Application, regarding non-communication of the subsequent Written Test Notice, as well as not holding or communicating the scheduled interview after the employee had firstly cleared the written examination in the year 2000 when these specific allegations were virtually left undenied, has certainly caused prejudice to the Petitioner's side. Undisputedly, for the purpose of deciding Judicial proceedings in the Tribunal, the Rules governing pleadings as contained in the Code of Civil Procedure, 1908 are fully applicable. Order VIII Rules 3, 4 and 5 specifically require that in a written statement, the denial of each allegation in the plaint (equivalent to O.A. in the present case) has to be 'specific' and categorical and in the event of denial being evasive or not specific, the allegations of fact made in the plaint, 'shall be taken to be admitted.....'

6. We may now advert to the specific pleadings on these facts as made by the Writ Petitioner in her Original Application in the relevant Paragraphs 4 (viii) to (xii), and their denial Parawise by the Respondents in their written statement, which are set out below -

Original Application (Para 4)	Written Statement (Para 4)
viii) <i>That as a result of qualifying in the written test held on 11.03.2000 the Sr. DPO N.Rly., Ferozpur vide letter dated 30.06.2000 informed that husband of applicant alongwith 11 others will be called for interview to be held in near future.</i> A copy of such office letter dated 30.06.2000 is annexed as Annexure A-4.	viii) <i>That the contents of Para No. 4(viii) of the OA are a matter of record. <u>The husband of the applicant did not participate in the viva voce for the reasons best known to him, hence he was not regularized.</u></i>
ix) <i>That on receiving no interview information husband of applicant vide letter dated 09.12.2000 requested to Sr. DPO, N. Rly. Ferozpur <u>to do the needful but no information regarding interview was given to husband of applicant.</u></i> A copy of such letter dated 09.12.2000 is annexed as Annexure A-5.	ix) <i>That the contents of this sub para of the OA are not admitted. It is specifically reiterated that Annexure A-5 is only an afterthought as stated above. <u>Moreover, by taking the next examination, any claim in that regard is deemed to have been relinquished. That apart, the same is highly belated and was never pursued and cannot be pressed now.</u></i>
x) <i>That when husband of applicant was on Railway Doctor Sick-List since 06.08.2001, the Sr. DPO, N.Rly., Ferozpur vide letter dated 22.08.2001 asked Station Superintendent, Ludhiana (SS/LDH) to spare the husband of applicant for written test to be held on 15.09.2001 <u>but husband of applicant was not informed about the same.</u></i> A copy of such letter dated 22.08.2001 is annexed as Annexure A-6.	x) <i>That the contents of Para No.4(x) of the O.A. need no reply. Since, however, the deceased employee was on sick leave, he was given the second chance to sit in the written test on 26.10.2002 which he missed, being absent from duty.</i>
xi) <i>That again written test for the purpose of regularizing the services of MBCs was Scheduled for 26.10.2002 but again husband of applicant was not informed about the same.</i>	xi) <i>That the contents of this sub para of the O.A. are wrong and denied. In this behalf, respondents would refer to Annexure R-That the contents of Para to Annexure R-2 which clear the position. The applicant is clearly guilty of concealment of facts.</i>
xii) <i>That husband of applicant vide letter dated 06.05.2004 <u>requested the Sr. DPO to give him a chance for screening/written test as he was not at fault for not appearing in the same but no response was given to husband of applicant.</u></i> A copy of such letter dated 06.05.2004 is annexed as Annexure A-7.	xii) <i>That the averments of this sub-para of the O.A. are tailored to suit the mind of the applicant. The request was highly belated. The result was already declared and the deceased employee had not participated in the written test held on 26.10.2002, reasons have been given above.</i>

7. It would therefore, appear that the Respondents have consciously evaded the Petitioner's allegations, especially those underlined above, regarding non-holding of the interview after her husband had cleared the written examination in the year 2000, as also non-communication of the Test for the subsequent examination to him which were specifically alleged, which were not categorically or specifically denied on behalf of the Respondents. On the other hand, they appear to have resorted to circumventing the gist of allegations in the O.A. by way of evasive averments without even adverting to the specific allegations that no date for interview was ever fixed or intimated to the deceased employee after he passed the written examination in 2000, or that he was never notified about the examination in the subsequent years in spite of his own written requests. In fact in Para 4(ix), the Respondents have gone to the extent of suggesting as if the deceased employee had even 'taken the next examination', which averment is palpably contrary to the Petitioner's specific allegations. If at all, the deceased employee had ever actually taken any 'next examination', the relevant particulars and date of the same ought to have been disclosed by the Respondents. But their conscious omission to do so coupled with the other manifestly evasive denials in their written statement would clearly indicate that actually, the relevant allegations made against them in the Original Application were substantially true.

8. In this view of the matter, we are of the view that the Ld. Tribunal has misdirected itself in mechanically accepting the submissions of the Respondents to the effect that 'the deceased employee had either absented himself from the interview', or 'did not succeed' in the Written Test

scheduled in 2000, 2001 and 2002. It would appear that the Ld. Tribunal perhaps did not consider the facts in the light of the specific pleadings made in the Original Application, which were consciously sought to be skirted from, and were not specifically denied by the Respondents as per requirements in Rules 3, 4 and 5 of the Order VIII of the Code of Civil Procedure.

9. Even otherwise, if the relevant Rule 75 governing 'Family Pension Scheme' for railway servants, 1964 is considered, the Petitioner would appear to have become entitled to 'Family Pension', but for the fact that the deceased employee was otherwise not regularized in spite of having put in more than 14 years of service. The relevant Rule 75(2) lays down -

“75. Family Pension Scheme for railway servants, 1964

(1)

(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies :-

(a) after completion of one year of continuous service; or

(b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service;

(c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53 :

the family of the deceased shall be entitled to a family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table (not printed).

EXPLANATION : The expression “Continuous one year of service” where-ever it occurs in this rule shall be construed to include “less than one year of continuous service” as provided in clause (b).”

10. The overall picture which thus emerges is that admittedly, the deceased employee had worked for in excess of the requisite one year of service, from 30.07.1992 till his death on 14.12.2006, and that he had also passed the requisite Medical examination on 5.08.1992. Consequently, on account of his death in harness, his widow would become entitled to grant of Family Pension. The same was however not granted, ostensibly as his services were 'not regularized'. But as can be rightly concluded by objectively considering the facts in the light of specific averments of the Petitioner, and evasive denial of the same by the Respondents, the employee himself was not at fault for such lack of regularization. He passed the requisite written examination in the year 2000, but was never called for interview in spite of the Respondents' own written communication dated 30.06.2000 for that purpose. He was not even intimated through his Controlling Authorities about the succeeding written examinations in the years 2002 and 2004. In fact, the Ld. Tribunal went on to hold that the employee could not clear the Written Test scheduled in 2000, 2001 and 2002. This observation is ex facie in correct since he had actually cleared the Test in 2000, while there is nothing on record even from the side of the Respondents to suggest that any such Test was at all held in 2001. Regarding the following year 2002, the petitioner's allegation that her husband was never intimated for taking the Test is virtually un-rebutted in the pleadings. Further, no rule or instructions have been brought on record to show that "Interview" was a mandatory condition for regularization of services when the employee was performing his duties for 14 years to the entire satisfaction of his superiors. We, therefore, have no hesitation in coming to the conclusion that substantially, the responsibility of the

deceased employee's services having remained un-regularized during his life time, lies with the Respondents themselves.

11. For the above reasons, the impugned Order of the Tribunal is unsustainable and is accordingly set aside. The Writ Petition is therefore, allowed and the Respondents are directed to do the needful for grant of Family Pension and other Retiral benefits of the deceased employee by notionally treating his services as regularized. She shall however, be entitled to arrears of Pension only for a period of three years preceding the filing of her Original Application in the Ld. Tribunal i.e. May, 2012 onwards.

12. The needful be done by the Respondents/Authorities within four months from the date of communication of this Order.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

February 21 , 2017
AS

1. Whether speaking/reasoned : Yes/No

2. Whether Reportable : Yes/No