

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3192-2019

Date of Reserved: 15.12.2022

Date of Decision: 23.12.2022

Ram Kali

.....Petitioner

Vs.

Central Administrative Tribunal, Chandigarh Bench and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr.Karnail Singh, Advocate, for the petitioner.

Ms.Puneeta Sethi, Sr.Panel Counsel,
for Union of India.

HARPREET KAUR JEEWAN,J.

This writ petition is filed by petitioner Ram Kali seeking quashing of the order dated 22.11.2018 and 7.12.2018 passed by the Central Administrative Tribunal, Chandigarh Bench (hereinafter referred as the Tribunal) whereby the claim of the petitioner for family pension was declined.

2. As per the facts set up by the petitioner, Shyam Lal the husband of the petitioner was working as Gangman, under Divisional Railway Manager, Northern Railway, Ambala Cantt. but he expired on 11.05.1996 while in service, as a result of a railway accident. The deceased was initially appointed as a casual worker in the year 1980 and was granted temporary status with effect from 03.10.1986 in the scale of Rs.196-210. He was sent for medical examination for the post of Khalasi in the scale of

Rs.196-210 but the result of the scale was not published due to administrative reasons. Meanwhile, he expired on 11.05.1996. The applicant, who is the wife of the deceased approached the respondents many times and ultimately she served a legal notice dated 17.04.2017 (Annexure A-6) and a representation was made on 03.06.2017 (Annexure A-2), but her request for grant of family pension was declined vide order dated 14.12.2017.

3. The petitioner approached the Tribunal and challenged the order dated 14.12.2017.

4. The Tribunal declined the application filed by the petitioner observing that the OA is hopelessly delayed and time barred, as husband of the applicant died way back on 11.05.1996, but the application for grant of family pension was filed only in the year 2017 i.e. more than 20 years after the death of applicant's husband, and there was no explanation to the said delay. The Tribunal has further observed that after sleeping over the matter for over 20 years, the applicant was reluctant to give adequate opportunity to the respondent-department to look into her claim. First, she got legal notice served from the department on 17.04.2014 (Annexure A6) and thereafter she made the first representation to the Department which is dated 03.06.2017 (Annexure A-2). It was observed that even her two letters seeking information under RTI was filed after the legal notice and her first representation. The Tribunal has also observed that the two of the letters/representations dated 15.06.2017 and the appeal under RTI dated 27.09.2017 do not bear her signatures. Only one report dated 03.06.2017 contains her signatures and this throws a doubt on the genuineness of the

documents and the submissions of the applicants and her counsel. Apart from this, it was also observed that from the age mentioned on the identity card as 28 years, it is not possible that the deceased could have worked as casual worker as at that time, he would have been only 15 years old in the year 1980. It was further observed by the Tribunal that as per the Railway Establishment Rules (Annexure A4), casual labour acquiring temporary status are entitled to all rights and privileges admissible to temporary Railway Services but it is not established that temporary railway employees are entitled to pension. Since the deceased was unscreened railway employee, therefore, he was not entitled to any railway pension as per rules.

5. The learned counsel for the petitioner submitted that petitioner is an uneducated lady. She was not aware of the rules and this was a reason for delay in approaching the Tribunal. It was submitted that the husband of the petitioner had expired by way of a railway accident, having rendered more than 10 years of service. He was granted the temporary status on 03.10.1986 and the petitioner is entitled to family pension. Reliance was placed on the decision of Hon'ble Supreme Court of India in *Inderpal Yadav Versus Union of India, 1985(2) SCC 648, decided on 18.04.1985*, and it was submitted that the deceased is to be treated as regularized employee in view of the said judgment. The learned counsel for the petitioner further submitted that the family pension is a cause of recurring nature, therefore, the dismissal of the petition by the Tribunal on the ground of limitation is not sustainable in the eyes of law.

6. After considering the aforesaid submissions and perusal of the

record, we are of the considered opinion that the order of the Tribunal does not suffer from any infirmity. Petitioner had himself alleged that the temporary status was granted to the deceased on 30.10.1986 as shown in the service record (Annexure A1) and he died on 11.5.1996. The said document (Annexure A1) as well as the averments of the petitioner contained in the representation (Annexure A2) clearly indicate the date of appointment of the deceased was 03.10.1986 and on the date of his death i.e. 11.05.1996, he has not completed 10 years of service. It is also to be observed that petitioner has himself alleged before the Tribunal that though the deceased was sent for medical examination for screening for the post of Khalsi but the result of the screening was not published due to administrative reasons. We have observed that there is nothing on record to indicate that the deceased was examined by appropriate medical authority and was declared fit by that authority for railway services at the time when he was granted the temporary status on 03.10.1986 or thereafter.

7. In view of the above circumstances, two conclusions can be drawn i.e. Firstly, the deceased had not completed 10 years of service after he was granted temporary status and secondly, he was not medically examined by screening and was not declared fit by the appropriate medical authority for railway services at any point of time.

8. The petitioner has himself relied upon the Family Pension Rules 1964 (Annexure A4), which clearly provides that the benefit of the said scheme shall not be admissible to the family of an employee who quits service before completing 10 years qualifying service. The benefit of Family Pension Scheme, 1964 are also not extended to the family of those

railway servants who have died before completion of one year continuous service prior to 27.1.1979 but who had been examined by the appropriate medical authority and declared fit by the authority for railway services prior to their appointment. The relevant portion of the said Rules are reproduced as under:-

“Family Pension Rules, 1964

(1) Applicability:- *These rules will be applicable to:-*

- (a) Staff appointed to Railway service on or after 1st January, 1964. The Supreme Court of India through its judgment of 30-04-1985 extended the benefit of Family Pension Scheme, 1964 to the families of those Railway servants who were/are born on pensionable establishment and are not presently covered by that scheme, namely the families of the Railway servants who were alive on 31.12.1963, but who opted out of the Family Pension Scheme, 1964 [R.B. Letter no.F(E) III/85/PFI/19 of 20-1-1988] (N.R., S.N. 9527).*
- (b) Non-pensionable staff who opt to come under the Pension Scheme on or after 1st January, 1964, within the time limit for exercising such option.*
- (c) Staff who were on pensionable service on 1st January, 1964 and have not exercised their option to retain their existing family pension benefits, on or before 30-6-64.*

The Family Pension Scheme is applicable in the case of regular employees on pensionable establishment, as such casual labourers will be brought on pensionable establishment only on their absorption against regular temporary posts. It follows that they will come under the purview of the scheme from the date of their absorption against the regular temporary post. In other words, the family pension scheme will be applicable in the case of death of such an employee while in service only if he had completed a

minimum period of one year's continuous service from the date he was absorbed against a regular temporary service. [R.B.No.F(P) 65 PN-1/2 of 21-10-65].

The benefits under this scheme shall not be admissible to:-

(a) The family of an employee who quits service before completing 10 years qualifying service and received lump sum gratuity.

(b) Superannuated re-employed staff or officers appointed on contract basis. [R.B.No.F(P) 64 PN-1/17 of 30-6-65]

Families of Railway servants who retired on superannuation or on being declared permanently incapacitated for further Railway service by the appropriate medical authority after having rendered temporary service of not less than 10 years prior to 1-1-1986, will also be eligible to family pension under the Railway Pension Rules, at the same scale as admissible to the family of a permanent employee from time to time.

The aforesaid provision will apply to those temporary employees who retired before 1-1-1986. The benefit will be available to the widows from 14-1-1988, [RB, letter No.F(E) III/88/PNI/4 of 2-3-1988] (N.R., S.N. 9547)

*(2) **Eligibility:-** Family pension, according to these rules, will be admissible to the family of the employee subject to the following conditions:-*

(a) In case the employee dies while in service he must have completed at least one year's service. Period of extraordinary leave should be counted for the purpose of reckoning one year. [R.B. No.F(E) III-71-PN-1/8 of 18-5-72 and 9-12-73] (N.R., S.N.5663 & 6065).

It has been decided by the President that the condition of one year's service will not apply henceforth

provided the Railway servant had been medically examined and found fit for appointment under the Government.

These orders take effect from 27-1-79 and shall not apply to the families of Railway servants who died before completion of one year's continuous service before 27-1-79. [R.B.No. F(E) III/78 PN 1/12 of 27-2-79] (N.R., S.N. 7230).

On re-consideration the Railway Board has decided that the benefit of Family Pension Scheme, 1964 be extended to the families of those Railway servants also who died before completion of one year continuous service prior to 27-1-79 but who had been examined by the appropriate medical authority and declared fit by that authority for railway service prior to their appointment. These orders will be effective from 24-10-86 and no arrears will be admissible. [R.B. No.F(E) III/85/PN/1/19 of 19-12-86] (N.R., S.N. 9157)”
(Emphasis supplied)

9. We further observe that despite the fact that the petitioner has not agitated her claim for a period of 20 years after the death of the deceased, the petitioner has failed to prove that she was entitled to family pension under the scheme applicable at that point of time.

10. Hence, no ground is made out to interfere with the decision of the Tribunal. Secondly, the present writ petition is devoid of any merits and is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

23 December, 2022
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Whether Speaking	Yes
Whether Reportable	No