

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.17784 of 2020 (O & M)

Date of Decision: *October 28, 2020*

Suresho Devi

..... PETITIONER(S)

VERSUS

Central Administrative Tribunal, Chandigarh & others

..... RESPONDENT(S)

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CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

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PRESENT: - Mr. Karnail Singh, Advocate, for the petitioner.

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Sant Parkash, J

Through the present petition filed under Article 226/227 of the Constitution of India, petitioner seeks for issuance of a writ in the nature of certiorari, quashing order dated 04.03.2020 (Annexure P-9) passed by respondent No.1 – Central Administrative Tribunal, Chandigarh (for short, 'Tribunal'), whereby claim of the petitioner for family pension has been declined; as well as quashing order dated 11.12.2008, whereby claim of family pension to the petitioner has been rejected on the ground that her husband (Chander Bhan), since deceased, was not a screened worker. Further, prayer has also been made for issuance of a writ in the nature of Mandamus, directing the respondents to grant family pension to petitioner with all consequential benefits.

Husband of the petitioner was initially appointed as Wash Boy in a Canteen under the control of respondents on 03.05.1979 in the Pay Scale of ₹ 196-210. Subsequently, as per letter dated 31.05.1989, he was appointed in the Pay Scale of ₹ 750-940 (revised to ₹ 2550-3200). He was medically examined on 05.09.1989.

The Hon'ble Supreme Court, vide judgments dated 22.10.1990 and 03.08.2015, rendered in **SLP Nos.1624 and 1625 of 2014**, titled **MMR Khan vs. Union of India & others** and **Mohan Singh vs. Chairman, Railway Board**, respectively, held that such employees of non-statutory canteens of Railways would be treated as Railway servants w.e.f. 01.04.1990 and governed by Railway Servants (Pension) Rules (for short, 'Rules').

On 04.08.2001, husband of the petitioner died. His wife Suresho Devi (petitioner herein) alongwith her son Titu Kumar, approached the authorities for grant of family pension vide application dated 02.05.2007, which stood rejected vide impugned order dated 11.12.2008 on the ground that Chander Bhan (deceased) had been working in Railway Department on casual basis and was unscreened, hence, there was no provision under the Rules to grant family pension in favour of the petitioner.

Aggrieved by aforesaid order dated 11.12.2008, petitioner approached the Tribunal by filing OA No.060/00067/2018, supported by an application for condonation of delay in filing OA on the ground that she kept on making efforts, and it being a recurring cause of action, delay in filing the OA be condoned. The Tribunal, vide impugned order dated 04.03.2020 dismissed the OA holding that the claim was barred by time and dependent

of an unscreened casual employee was not entitled to grant of family pension.

Learned counsel for the petitioner has vehemently contended that her husband died after rendering more than 12 years of service and thus, he was deemed to be regularised. The ground for denial of family pension to the petitioner, that her husband was casual worker at the time of death, is wholly illegal and against the settled canons of law. Further the dismissal of OA on the ground of limitation also, is erroneous as it was a cause of recurring nature and thus was not barred by time. Learned counsel further contended that a person who was not made regular during his service but was entitled to considerations in terms of the scheme, must take the benefits as a regular appointee himself and family pension should be granted deeming the deceased having been regularized. The authorities, vide impugned orders have defeated the very purpose of family pension by adopting hyper technical view i.e. screening.

We have heard learned counsel for the petitioner and perused the record.

A perusal of the record reveals that initially the claim for family pension on behalf of petitioner, was raised by her son Titu Kumar, in the year 2008 which was rejected vide order dated 11.12.2008. The said order was not assailed by the petitioner within the limitation, except filing of OA before the Tribunal in the year 2018. The petitioner failed to establish as to what prevented her from filing OA in time, in as much as, no plausible explanation was putforth, except vague assertions that she was poor and uneducated.

The Tribunal is not empowered to admit any application filed after lapse of period prescribed therein unless each day's delay is explained to its satisfaction. The Tribunal, in the impugned order was well justified to deny the claim of the petitioner on the ground of unexplained and unreasonable delay. It is a settled principle of law that each and every day's delay has to be explained which has not been done. As such, dismissal of OA on the ground of limitation is absolutely right.

On merits, admittedly, husband of the petitioner was a casual worker and had not been "screened". Though, it is the case of petitioner that a casual worker is entitled for the same rights as temporary railway servants, but she failed to establish as to under what provision of law, a temporary railway employee was entitled to pension. On the other hand, respondents in their written statement before the Tribunal have specifically averred that an unscreened employee was not entitled to any pension as per Rules.

In view of the aforesaid discussion, we do not find any merit in the instant petition and the same is dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

October 28, 2020
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No