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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.648 of 2002

New Delhi this the 17th day of February, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Smt. Amasi,
W/o Late Shri Raju,
R/o A-3334, Wazirpur JJ Colony,
Delhi-110052.

...Applicant

(By Advocate : Shri S.M. Garg)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. The Divisional Rail Manager,
Northern Railway, DRM Office,
Baroda House, New Delhi.
3. The Divisional Personnel Manager,
Northern Railway, DRM Office,
Baroda House, New Delhi.

...Respondents

(By Advocate : Shri V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

Through this OA applicant impugns respondents' order dated 8.8.2001 whereby her request for accord of family pension has been rejected. She has also sought quashment of the order with direction to the respondents to grant family pension w.e.f. 7.2.1991 with all consequential benefits.

2. Deceased casual labour was employed as C&W safaiwala in the Northern Railway on 10.4.1981 and was accorded temporary status on 26.1.83.

3. A screening was held in the year 1990 and name of the deceased was included in the list of eligible candidate but on account of sudden demise on 7.2.91

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screening could not take place and was declared unscreened. Applicant widow of the deceased was accorded compassionate appointment made representation for grant of family pension with arrears and finding no response filed OA-668/2001 wherein directions have been issued by an order dated 30.3.2001 to dispose of the representation.

4. Learned counsel for applicant Sh. S.M. Garg contended that in the light of the decision of the Apex Court in Prabhavati Devi v. Union of India & Others, (1996) 7 SCC 27 the deceased who acquired temporary status and has put in continued one year's service and was drawing a regular scale of pay under Rule 2318 of IREM is entitle to be accorded family pension.

5. Shri Garg further stated that decision in Union of India and Others v. Rabia Bikaner and Others, (1997) 6 SCC 580 would be distinguishable as the Scheme in Prabhavati Devi's case (supra) would apply to his case as he was conferred with temporary status and was drawing a regular scale of pay. As such the OA deserves to be allowed.

6. On the other hand, respondents' counsel Shri V.S.R. Krishna strongly rebutted the contentions and stated that completion of one year's service as prescribed in the Rules ibid is a service on getting regular status but cannot be a service rendered on temporary status. In this conspectus it is stated that in Rabia Bikaner's case (supra) similar claim was rejected by the Apex Court. Moreover, it is stated that applicant was not screened and

was not a regular employee and the service rendered on casual basis cannot count as qualifying service. Accordingly her claim cannot be allowed.

7. I have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in Prabhavati Devi's case (supra) made the following observations:

"4. The deceased kept working as a 'substitute' till 5-1-1987 when he died. But before his demise, he came to acquire certain rights and privileges under Rule 23318 of the Rules applicable to Railway Establishments. The said rule provides 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. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 23311, 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 Central Administrative Tribunal, Patna Bench, Patna, was dismissed which has culminated in this appeal."


8. In Rabia Rikaner's case (supra) the decision in Prabhavati's case (supra) was distinguished by making the following observations:

"4. It is contended by the learned counsel for the respondent-widows that under para 2511-"Rights and Privileges admissible to the casual labourers who are treated as temporary after completion of six months"

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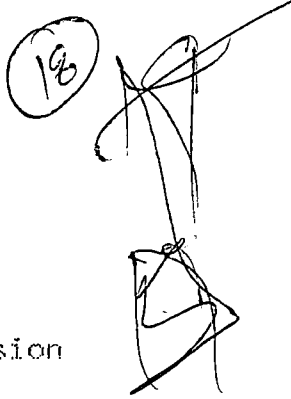
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continuous service"- of the Railway Establishment Manual, they are entitled to family pension. We find it difficult to give acceptance to the contention. It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits.

5. The learned counsel strongly relied upon the judgment in Prabhavati Devi v. Union of India. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the Railway Establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that the widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgment of this Court in Union of India v. Sukanti wherein relying on the ratio in Ram Kumar case this Court held that no retiral benefit was available to the widow of the casual labourer who had not been regularised till

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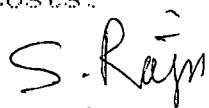
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his death. Thus, we hold that the view taken by the Tribunal in granting the pensionary benefits to the respondents is clearly illegal."

9. If one has regard to the subsequent decision in Rabia Bikaner's case (supra) and in view of the decision in Union of India v. Sukanti, SLP (C) No. 3341/1993, as retiral benefits were not available to the widow of the casual labour who has not been regularised till her death the claim of applicant is not legally sustainable. Moreover the distinguishing feature in Prabhavati Devi's case (supra) was that the deceased therein was screened and also appointed to temporary status whereas in the present case deceased could not be screened although accorded temporary status. In the light of the decision in Rabia Bikaner's case (supra) and the provisions of Family Pension Scheme, 1964 deceased who was not regular and had not completed one year's service, his widow is not entitled to the benefit of the Family Pension Scheme of 1964. Merely because the deceased continued in regular scale of pay in the Railway establishment without any screening would not be deemed to be continued on regular basis.

10. For the foregoing reasons and in the light of the subsequent decision of the Apex Court in Rabia Bikaner's case (supra) wherein the decision in Prabhavati Devi's case (supra) was distinguished the claim of applicant is not admissible under the rules and I do not find any legal infirmity in the orders passed by the respondents, rejecting the claim of applicant for family pension. Accordingly, OA is found bereft of merit and is accordingly dismissed. No costs.


(SHANKER RAJU)
MEMBER (J)