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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~XXXX~~ NO.240 of /1995 with
MA No.278, 279 and 280 of 1995

Decided on: 10-10-1995

Smt. Indu and Others ...Applicant(s)

(By Shri B.K. Batra Advocate)

Versus

Union of India & Others ... Respondent(s)


(By Shri P.S. Mahendru Advocate)

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~~THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)~~

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. To be referred to the Reporter or not? 72
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2. Whether to be circulated to other Benches nd
of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.240 of 1995 with
M.A. Nos. 278, 279 and 280 of 1995

New Delhi this the 16th day of October, 1995

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Smt. Indu widow of
Late Shri Sujjan
 2. Tek Chand
S/o Late Shri Sujjan
 3. Janaki
d/o Late Shri Sujjan
 4. Bhagwati
d/o Late Shri Sujjan
- ..Applicants

All the applicants are resident
of Village Kudena Check,
Post Bijora District: Moradabad.

By Advocate Shri B.K. Batra

Versus

1. The Union of India through
the General Manager,
Northern Railway,
New Delhi.
 2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
 3. Assistant Engineer,
Northern Railway,
Hapur.
- ..Respondents

By Advocate Shri P.S. Mahendru

ORDER

The applicants are widow and other legal heirs
of the late Shri Sujjan, ex-causal labour Khalasi
under the Inspector of Works, Northern Railway, Hapur.

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The applicants' grievance is that despite the fact that the deceased employee had served the respondents for almost 18 years, the respondents have denied payment of family pension benefits to the widow of the deceased employee. It is alleged that although Shri Sujjan was appointed as a casual Khalasi on 30.01.1974 and was granted temporary status in 1988, he was put to a screening test for regularisation only in 1992.

Due to the inordinate delay on the part of the Railway Administration in arranging the screening test for the deceased employee, the applicants have been denied the benefits of family pension on the ground that late Shri Sujjan was not regularised. It is also alleged that the respondents had subjected to screening, persons junior to the deceased Shri Sujjan and had absorbed them and, therefore, the late Shri Sujjan was discriminated against. Shri Sujjan died on 26.08.92 soon after his screening test, which was held on 19.08.92 in which he was stated to have been declared successful. The applicants allege that in terms of the instructions of the Railway Board, had the deceased employee been put to the screening test without such inordinate delay, he would have had the minimum of at least one year service as a regular temporary employee for whom the Railway Board's rules and orders provide for eligibility for family pension. The applicants, therefore, allege that the deceased employee should be deemed to have been absorbed in the regular service on the due dates particularly when the juniors have been absorbed in the regular employment. The applicants also contend that the respondents have

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not cared to reply to the representation for family pension filed by the widow of the deceased employee on 5.4.93, Annexure A-9. The applicants have filed M.A. No. 278 of 1995 for joining of the applicants in a single application as they all have a common cause of action. In another M.A. (280 of 1995) they have stated that the nonpayment of retiral benefits is a recurring cause of action and they have prayed for condonation of delay in filing of this application. The applicants have also filed another M.A. No. 279 of 1985 with a prayer for direction to the respondents to produce the record relating to the screening test held on 19.08.92 alongwith casual labour card of the deceased employee and his personal file. The O.A. and the MAs were all heard together and are disposed of by this order.

2. The respondents have not opposed the M.A. for joining together of the applicants. Since the applicants have a common cause of action, this MA (278 of 1995) is allowed. The respondents, however, have strongly contested the M.A. for condonation of delay on the ground that the filing of the representation by the applicants does not extend the limitation and they have also contested the reliefs claimed by the applicants as being barred by limitation. Taking into account the fact that the deceased employee had died in the later part of 1992, the widow had made representation for family pension by her letter dated 5th of April, 1993 and the respondents have not sent any reply to the widow and further taking into account the fact that the applicants are not expected to be very familiar with

the law laid down on limitation and the provisions of the Administrative Tribunals Act, 1985 and also the fact that the claim in this application is for family pension, the MA No.280 of 1995 is allowed.

3. The respondents have strongly contested the averments in the O.A. in their counter-affidavit. It is contended that the deceased employee died only as a casual labourer with temporary status and the applicants are estopped from raising this issue of regularisation of employee at this belated stage and that they have no locus standi to do so. It is necessary to dispose of this contention at the outset. The maxim 'actio personalis moritur cum persona' is applicable with reference to the relief claimed and the facts in each case and is limited in its application. As observed by their Lordships in **Shri Rameshwar Manjhi (Deceased) through his son Sri Lakhiram Manjhi Vs. The Management of Sangramgarh Colliery and Others, 1994(1) SLJ (SC) Vol.51 page 173**

"12. The maxim 'actio personalis moritur cum persona' though part of English common Law has been subjected to criticism even in England. It has been dubbed as unjust maxim, obscure in its origin, inaccurate in its expression and uncertain in its application. It has often caused grave injustice. This Court in a different context, in considering the survival of a claim for rendition of accounts, after the death of the party against whom the claim was made, in **Girijanandini Vs. Bijendra Narain, AIR 1967 SC 1124** at page 1131 observed as under:-

"The maxim 'actio personalis moritur cum persona' a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is

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not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting, it would be nugatory".

13. It is thus obvious that the applicability of the maxim 'actio personalis moritur cum persona' depends upon the 'relief claimed' and the facts of each case....."

4. In the instant case, the claim is for family pension which would have been allowable had the applicant been regularised in service. While taking into account the facts of this case, I am of the view that the applicants are rather justified in contending that the relief claimed by them has been contested by the respondents after their inaction and inordinate delay in regularising the deceased employee while he was alive. Therefore, the contention of the applicants that the respondents had denied the regularisation benefits to the deceased employee is clearly a reasonable contention. It cannot be said that the relief claimed cannot survive after the death of the deceased employee, had he been regularised while in service.

5. Let me now come to the substantive issues involved in this application. The allegation in the application is that the deceased employee, who was declared temporary casual labourer in 1988 was put to a screening test for regularisation in August, 1992 soon after which date, the applicant passed away and by the action of the respondents in not taking early action for regularisation of the deceased employee despite the fact that he had done long years of

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service, the deceased employee should have been deemed to be regular and should have been absorbed in regular service on due date. The respondents have stated that regularisation of casual labourers is done as per the said rules and instructions issued from time to time and as he was not regularised prior to his death, he cannot be deemed to have been regularised. It is also denied by the respondents that they have regularised any junior prior to the death of the deceased employee. In the rejoinder-affidavit, however, the applicants have contested the averments of the respondents and have stated that the respondents had conducted a screening test for regularisation of casual labourers of Engineering Branch on 15.4.1991 in which one Shri Budhoo S/o Shri Parshadi, Gangman under PWI Hapur, who had worked for even less number of days than the deceased employee Shri Sujjan, was regularised. It is, therefore, contended in the rejoinder that the deceased employee Shri Sujjan became entitled to be regularised from the date than the person junior to him who had attended the screening test held on 15.4.1991 or on earlier dates. It is, however, first necessary to look into the entitlement for family pension, as provided under the rules. Rule 101 of the Manual of Railway Pension Rules, 1950 provides for retirement benefits for Railway servants. Rule 101 (2)(b) reads as follows:-

"In the case of a temporary Railway servant, the benefit comprises of:

(a).....

(b) if he dies while in service-

(i) a death-gratuity to his family;and

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(ii) a family pension if, at the time of death, the employee had completed one year's continuous (qualifying) service".

Therefore, if a temporary Railway servant dies while in service, he will be entitled to a family pension, if at the time of death, the employee had completed one year's continuous (qualifying) service. The qualifying service is described in Rule 104 (1), as follows:-

"104(1) Length of 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 -(emphasis added)

(i) period of temporary or officiating service in a non-pensionable establishment;

(ii) period 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 post; and

(iii) periods of service in a post paid from contingencies other than those indicated in para 409(ii)".

In the instant case, the qualifying service as defined in para 104(1)(ii), is relevant. According to this rule, the periods of casual / daily rated service and period of service of casual labourers treated as temporary on completion of six months continuous service until they are absorbed against regular temporary/permanent posts, cannot be counted as qualifying service (emphasis added). Admittedly, in this case, the deceased employee was given temporary status only with effect from 15.6.1988 and he passed the screening test in D-1 category. It is

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also admitted that in the screening test held on August, 1992 for regularisation, he was declared successful vide para 4.7 of the counter-reply. It is stated that the deceased Government servant would have been regularised in his own turn, but Shri Sujjan died prior to his regularisation. In the face of these facts, it is clear that on the basis of these admitted facts, the deceased employee cannot be considered to have rendered the necessary qualifying service for the benefit of family pension. The controversy, however, is regarding the delay in putting the deceased employee to the screening test for regularisation and it is contested that the respondents have conducted another screening test in April, 1991 itself when some of the juniors too, who had done less number of days of service had been screentested and were regularised. The learned counsel for the applicants strongly relied on Smt. Taru Lata Gupta and Another Vs. Union of India, 1991(3) SLR CAT, Calcutta 279. In that case, the facts were that the services of the Railway servants were terminated with effect from 30.12.1980. Their termination was set aside by the Tribunal as being illegal and consequentially it was held that they had to be deemed to have been in continuous service with effect from 1980 to 1983 and, therefore, the Railway servants had to be treated as a Railway servant till his death in 1983. He having been granted temporary status from 1979 and had completed one year's of continuous qualifying service from the date of his death, was held to be eligible for family pension. As in the present case, there also, the deceased employee was not absorbed prior to his death.

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The learned counsel also relied on the decision in Smt. Jhunubala Vs. Union of India & Others, 1993(2) SLR CAT Calcutta page 147 and Smt. Bhagabati Nayak Vs. Union of India & Others, 1993(1) Vol.14 ATJ 429 Calcutta. In the latter case, the Tribunal held that the applicant who had rendered 14 years of service as a casual labourer and who had passed the suitability test should be deemed to have been regularised and entitled to family pension as per the Railway Pension Rules.

6. The learned counsel for the respondents while arguing on the pleadings strongly relied on the decision in Ram Kumar and Others Vs. Union of India in SLR S.C. 1988(1) page 677, to contest the point that the casual employees who are not regularised will not be entitled to retiral benefits or family pension. In the aforesaid case their Lordships while agreeing with the Learned Additional Solicitor General that retiral benefits is not admissible to either category of employees, viz. casual labour and casual labour who have acquired temporary status, reiterated the urgent need for Railway Administration to take appropriate steps to remove the difficulties faced by the casual labour.

7. Taking all these aspects of the matter into account, I am of the considered view that the deceased Shri Sujjan who had attained temporary status in 1988 but had not been regularised before his death in 1992, should not be denied the benefits, if it is established that the juniors were put to a screening test earlier in April, 1991 and had been absorbed. It

is, therefore, incumbent on the respondents to specifically look into this matter and consider whether there was any administrative lapse in not putting the deceased late Shri Sujjan to the screening test for regularisation when the respondents had conducted the test on 15.4.1991 wherein certain juniors to the deceased Shri Sujjan, who had put in less number of days were screen-tested and absorbed. I, therefore, consider it appropriate to direct the respondents to examine within three months from the date of receipt of the copy of this order, whether the deceased Shri Sujjan could have been put to a screening test when it was held in April, 1991, when one Shri Budhoo, stated to be junior to the ^{late Shri Sujjan} applicant or anyother juniors with less number of days of service dhad been screened tested and regularised and whether there was any administrative lapse in this regard. If it is found so, then the respondents are directed to issue suitable orders deeming late Shri Sujjan to have been regularised from the date his junior was regularised in the screening test held in April, 1991 and then accord the benefits of family pension under the Pension Rules, as he would have completed one year of service at the time of his death.

8. The application is disposed of with the above directions. No costs.


(K. MUTHUKUMAR)
MEMBER (A)

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