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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2477 of 1997

New Delhi, this the 1st day of July, 1998

Hon'ble Mr. T N Bhat, Member (J)
Hon'ble Mr. S P Biswas, Member (A)

Nanki Devi W/O Shri Fateh Singh,
R/O A-Block, H. No. B-44,
Shakarpur, Gali No. I, New
Delhi.

--APPLICANT.

(By Advocate Sh. A K Bhardwaj)

Versus

Union of India

Through:-

1. The General Manager,
Northern Railway, Baroda
House, New Delhi.
2. The Chief Administrative
Officer (C), Northern
Railway, Head Office,
Kashmiri Gate, Delhi - 6.
3. The I.O.W. (C), Northern
Railway, Kashmiri Gate,
Delhi.

--RESPONDENTS.

(By Advocate -Sh. B S Jain)

O R D E R

By Mr. S P Biswas, Member (A) -

The applicant is aggrieved by the action of the respondents in retiring her before the age of 60 years and not giving her pension on superannuation on completion of more than 20 years of service as temporary status Khalasi.

2. She claims that as per Railway Board's letter No. (EP & A)-I-82/RT-16 dated 18.12.1992 and Northern Railway S.No. 8206, the railway servant in Class IV service or post who, prior to 1.12.1962 was entitled to serve upto the age of 60, including new entrants to those categories

shall retire from service on the service on the last day of month in which he/she attain the age of 60. As regards pension, the applicant's claim is based on the decision of the Hon'ble Supreme Court in the case of **Prabhavati Devi Vs. Union of India & Others** 1996 (1) SC SLJ 89, the decision of Ernakulam Bench of this Tribunal in the case of **S Sarojini Vs. Union of India & Others** 1997 (2) ATJ 377 and Railway Boards' letter dated 29.12.1979 (NR S.No. 7477).

3. The applicant argued that w.e.f. 1.1.1983, she was appointed in the Indian Railway Establishment in regular scale of pay and allowances applicable to the post of Khalasi on which she was employed and had acquired the status of a "Substitute". Since she has entered into the status of a Substitute, the benefits as envisaged in the cases of **Prabhavati Devi** and **S Sarojini** (Supra) cannot be denied in her case.

4. The respondents have resisted both the claims. It has been argued that the applicant was holding only a temporary status and was not a regular railway employee and accordingly she was not entitled to be retained in the service upto 60 years of age, as alleged. It has also been submitted that even for regular railway employees the benefit of continuing in service upto 60 years of age for Group II employees is admissible to those who joined service prior to 1st December 1962, as per the provisions in Rule 1801 (FR 56) of the Indian Railway Establishment Vol.II, 1987. The applicant was only casual labour holding temporary status w.e.f.

of

1.1.1984 and not from 1.1.1983, as alleged. The respondents further argued that she was not at all temporary Khalasi having been given the status of a "Substituute" as alleged.

Heard several contentions of counsel for both parties and perused the records.

We find that the Rule 1801 of IREM Volume II, 1987 stipulates in para (b) as under:-

"(b) Railway servant in Group D service or post who, prior to 1st December 1962 was entitled to serve upto the age of sixty years, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years."

The above facility will be extended subject to the following provisions:-

"Provided further that the appropriate authority shall have the right to terminate the extension of service, before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent railway servant, or one month in the case

18

of a temporary railway servant,
or pay and allowances in lieu of
such notice."

5. The issue that falls for determination in respect of this particular claim of the applicant is whether she was a temporary railway servant or a temporary status railway servant. The applicant herself has admitted that "she served the respondents for 14 years after acquiring temporary status." A 'Temporary Railway Servant' would mean a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", a "contract" or "part-time" employee or an "apprentice". This is as per definition of "Temporary Railway Servant" as in 2301 of the Indian Railway Establishment Code. Thus, the applicant could not be treated as "temporary railway servant" as she was originally appointed as a Water Woman on casual basis and was subsequently given a temporary status. She was a temporary status casual labour and this was ^{not} the same as temporary railway servant. ^

6. Under these circumstances, the benefits of Rule 1801 (b) of IREM, Vol. II in terms of 60 years of working cannot be extended to the applicant herein as the rule is applicable only in respect of a regular group 'D' employee or a temporary railway servant in Group 'D' category.

3

19

7. Counsel for the applicant strenuously argued to say that the applicant had acquired the status of a Substitute from 1.1.1983. When we wanted to see the documents, no evidence/ document could be produced by the applicant to show that she has gained the status of a Substitute at any stage. The respondents have also denied the claim of the applicant in this respect in working. The claim that the petitioner has completed more than 10 years of service as "Substitute" has not been established on the basis of records. The counsel for applicant strenuously tried to establish that conferment of temporary status is by itself good-enough to be treated as having achieved the status of a "Substitute". He would like the conferment of temporary status on the applicant to be treated as Substitute because only in the shape of the Substitute that different sets of benefits could be legally claimed as enunciated in the cases of Prabhavati Devi and S. Sarojini (Supra). Unfortunately, there are no records to show that the applicant was ever appointed as a "Substitute".

8. We find that the ratios arrived in the decisions of the Hon'ble Supreme Court in the case of Ram Kumar Vs. Union of India & Others (1987) 5 ATC 404, Union of India & Others Vs. Moti Lal & Others (1996) 33 ATC 304, Smt. Selvambal Radhakrishnan Vs. Union of India & Others 1996 (3) SLJ SC 172, Sukh Ram Vs. Union of India & Others OA 2232 of 1996 decided on 10.9.1997 and Union of India & Others Vs. Rabia Bikaner are squarely applicable in the facts and the circumstances of the case. The attainment

2

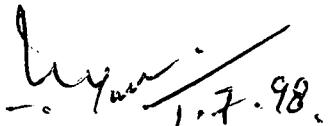
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of temporary status and appointment as a Substitute are two different things and an attempt to camoflague appointment or conferment of temporary status being equivalent to status of a Substitute is not permissible.

In the background of the above, the OA fails on merits and is accordingly dismissed.


(S P BISWAS)

MEMBER (A)


T N Bhat
1.7.98
MEMBER (J)

/sunil/