

13

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO. 2005/2000

New Delhi, this the 08<sup>th</sup> day of November, 2001

Hon'ble Shri S.A.T. Rizvi, Member (A)

1. Smt. Vakila  
Widow of Late Shri Sahid  
R/o House of Abdul Hameed  
Masjid Junglewali, Beriwalla Bagh  
Bara Hindu Rao  
Delhi-7.
2. Kumari Gulista  
D/O Mr. Sahid  
Ex. Khalasi Mali  
Under Inspector of Works,  
Meerut City Nortner Railway  
through her mother  
Smt. Vakila as Guardian
3. Shri Gulzar  
S/O Late Shri Sahid  
through his mother  
Mrs. Vakila as Guardian
4. Shri Afzaal Ahmed  
S/O Late Shri Sahid  
through his mother  
Mrs. Vakila as Guardian

..Applicants

(By Advocate: Shri S.K.Sawhney)

VERSUS

1. Union of India through  
General Manager  
Northern Railway  
Baroda House,  
New Delhi
2. Divisional Railway Manager  
Northern Railway  
Chelmsford Road  
New Delhi
3. Senior Divisional Accounts Officer  
Northern Railway  
Delhi Division  
DRM Office, Chelmsford Road  
New Delhi

..Respondents

(By Advocate: Mrs. Meera Chhibber)

O R D E R

Shri Sahid, a casual worker appointed in 1977 and  
screened for the post of Works-Khalasi in 1980 (Annexure

d

14

(2)

A-I), died on 5.5.1985 before he could be regularised on the basis of the aforesaid panel of screened workers issued on 19.3.1980. His wife, daughter and two sons have filed the present OA in September, 2000 claiming payment of settlement dues and family pension. The prayer made is for a direction to the respondents to:

- (i) grant family pension to the applicants with arrears from 6.5.1985 along with interest,
- (ii) make payment of gratuity with interest on the basis of the decision taken in one of the PNM meetings held in 1997; and
- (iii) pay insurance money in respect of the life of the deceased employee.

2. Out of the aforesaid reliefs, the learned counsel for the applicants has not pressed the reliefs at (ii) & (iii) above. I am thus left with only one relief, namely, the relief No. (i) above and accordingly proceed to deal with the same.

3. The learned counsel appearing on behalf of the applicant has first contended that the deceased employee aforesaid deserved to be given regular appointment as Works-Khalasi on the basis of the aforesaid panel of screened casual workers well before he died on 5.5.1985, and that if he had been so regularised, his family consisting of the applicants would have become entitled to receive settlement dues and family pension in accordance with the relevant rules.

*dr*

4. In support of his aforesaid contention that the deceased employee could well have been regularised before his death, the learned counsel has drawn my attention to Northern Railway's letter dated 19.10.1992 (Annexure R-II) which contains the following stipulation:-

"The casual labours borne on the screening panel issued under this office letter no. Sr. DPO-I/Screening/CL-IV/89 dated 10.7.89 who have been regularised earlier against resultant vacancies and whose name are existing in the enclosed list may be regularised against the post sanctioned for de-casualisation in 2nd phase..."

According to the learned counsel, the aforesaid stipulation clearly implies that by the time the aforesaid letter of 19.10.1992 was issued and as a matter of fact much before that and during the life time of the deceased employee, those placed on the panel of screened casual workers in March, 1980 had already been regularised. In other words, the panel issued in March, 1980 had already exhausted. The learned counsel contends that the said panel had in fact exhausted while the deceased employee still lived. That being so, according to him, the deceased employee could and should have been regularised before he died on 5.5.1985. The learned counsel appearing on behalf of the respondents disputes the aforesaid contention by asserting that the aforesaid panel of March, 1980 could not be exhausted by way of regularisation for a long time due to non-availability of regular vacancies. According to her, even those who were senior to the deceased employee in the aforesaid panel of March, 1980 were regularised in 1990-92 only, i.e., well after the death of the employee in question. Insofar as the

2/

(4)

15

applicants' claim that one Shri Bharat Singh, S/O Shri Gajay Singh who was junior to the deceased employee in the panel of March, 1980 was regularised in 1981 is concerned, the respondents have clearly stated that the aforesaid Shri Bharat Singh was in fact regularised only in 1992. A copy of the list of those regularised in 1992 has been supplied by the respondents and is placed on record at Annexure R-II. I find that the same contains the name of the said Shri Bharat Singh. Thus, the claim made by the applicants that the deceased employee could have been regularised before his death in May, 1985 on the basis that a person junior to the deceased employee had been so regularised in 1981 is found to be untenable and is rejected. In the circumstances, it is established beyond doubt that the deceased employee had not been regularised before his death in May, 1985 and was still continuing as a casual worker with a temporary status.

5. The learned counsel appearing on behalf of the applicants has next proceeded to argue that even if it is assumed that the deceased employee could not be regularised or was not regularised before his death, his family would still be eligible to receive family pension. In support of his contention, he has placed reliance on a number of rules and also on a couple of rulings of the Courts. I now proceed to deal with the same keeping in view the arguments advanced by the learned counsel for respondents.

6. Rule 2005 of the I.R.E.M. Volume II (Revised Edition 1990) on which reliance has been placed by the

*Dr*

learned counsel, insofar as the same is relevant for my purpose, is reproduced below:-

"2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).- (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual..."

The aforesaid Chapter XXIII has since been re-numbered as Chapter XV of the Manual. I have accordingly gone through the same with the assistance of the learned counsel to find out as to which rights and benefits the applicant would be entitled to as provided in Rule 2005 reproduced above. The aforesaid Chapter XV in respect of temporary railway servants provides for several rights and benefits, including pay and allowances, educational assistance etc. etc. However, the grant of family pension has nowhere been mentioned in the relevant paragraphs from para 1501 to para 1511 of the aforesaid Chapter. Thus, even if it is assumed that by virtue of being treated as temporary in accordance with Rule 2005 *ibid*, the deceased employee was entitled to the rights and benefits available in Chapter XV, the claim for family pension cannot be sustained as the grant of such pension is not listed therein as one of the rights and benefits which the applicant could claim.

7. Relying on the same Rule 2005 *ibid*, the learned counsel appearing on behalf of the respondents has argued that pensionary benefits could not accrue in the absence of regular absorption of the employee. In support of this

*Dr*

contention, she has relied on the following further provisions made in the aforesaid Rule 2005:-

"Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment..."

(emphasis supplied)

8. She has further relied on the following provisions also made in the same rule to support her contention that a casual labourer, such as the deceased employee was, could not be brought on to the permanent or regular establishment or treated as in regular employment until and unless he is selected through regular selection board. The relevant provision, she has relied on, can be usefully reproduced in the following:-

"(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time..."

(emphasis supplied)

9. According to her, the deceased employee herein could not, in view of the aforesaid provision, be treated as having been regularised, though he had no doubt attained temporary status in course of time. The sum and substance of the aforesaid argument advanced on behalf of the respondents is that all the various provisions made in

2

Rule 2005 cannot be relied upon for laying a claim for the grant of pensionary benefits, and that being so, the very same provision cannot be invoked to assist the applicants in making a claim for the grant of family pension.

10. Family Pension Rules in respect of railway servants are to be found in Rule 75 of the Railway Servant (Pension) Rules, 1993 on which excessive reliance has been placed by the learned counsel for the applicants. According to him, the applicants are entitled to family pension in terms of sub-rule 2 of the said rule which provides as under:-

"(2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies:-

- (a) after completion of one year of continuous service, or" (emphasis supplied)

The deceased employee had undoubtedly completed more than one year of continuous service and, therefore, according to the learned counsel, the applicants are entitled to receive family pension in accordance with the aforesaid provisions. This is seriously disputed by the learned counsel for the respondents, who has successfully contended that the aforesaid rule would apply only to railway servants and in terms of the definition provided in Rule 3 (23) of the aforesaid Pension Rules, the deceased employee clearly stands excluded. According to the said sub-rule for a person to be termed as a railway servant, he should be a member of a railway service or should hold a post under the administrative control of the

dr

Railway Board. Casual labourers have been specifically excluded from the aforesaid definition of railway servants. After consideration, I find substance in the arguments advanced on behalf of the respondents and do not find any difficulty in concluding that the deceased employee not being a railway servant, his family, namely, the applicants are not entitled to the benefit of family pension.

11. The learned counsel for the applicants also relied on Rule 14 of the aforesaid Pension Rules to advance the plea that the entire service rendered by the deceased employee would be counted for the grant of pensionary benefits. With the same object in view, he has further relied on sub-rule 19 of Rule 75 which defines 'continuous service'. These, I find, will find application only after a conclusion is reached that the applicants are entitled to the relief of family pension. I have already seen above that on the basis of the rules relied upon by the learned counsel for the applicants, it is not possible to arrive at the conclusion that the applicants are entitled to family pension.

12. Proceeding further with his arguments, the learned counsel appearing on behalf of the applicants has placed reliance on Prabhavati Devi Versus Union of India & Ors., decided by the Hon'ble Supreme Court on 16.11.1995 and reported as (1996) 7 SCC 27 which has also been relied upon by the High Court of Andhra Pradesh in Eluri Marthamma Versus Divisional Railway Manager, S.C.Railway & Ors. decided by that Court on 6.12.1999 and reported as ATJ 2000 (3) 238. The Supreme Court has in the aforesaid case laid down as under:-

dr

(FX) (21)

"4. The deceased kept working as a 'subordinate' till 5.1.1987 when he died. But before his demise, he came to acquire certain rights and privileges under Rule 2318 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 2311, 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..."

13. The learned counsel appearing on behalf of the respondents has, on the other hand, relied on Union of India & Ors. Versus Rabia Bikaner etc., decided by the Supreme Court on 7.7.1997 and reported as JT 1997 (6) SC 95 in which the aforesaid Prabhavati Devi's case (supra) has been noticed. In the aforesaid case, the Supreme Court has held as follows:-

"3. ...In other words, the benefits of the Family Pension Scheme for Railway Employees, 1964 will be admissible 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 post. (emphasis supplied)

4. xx xx xx xx xx xx  
5. ...this Court held that no retiral benefit was available to the widow of the casual labour who had not been regularised till his death....."

14. She has thereafter relied on a decision rendered by the Calcutta Bench of this Tribunal on 8.12.2000 in

22

(10)

Smt. Lakshmi Moni Sardar Versus Union of India & Ors. in which in turn reliance has been placed on the Supreme Court's judgement in Rabia Bikaner's case (supra). Paragraph 7 of the aforesaid judgement of this Tribunal is relevant for my purpose and is reproduced below in extenso:-

"7. In this context, it will be useful to refer to the decision of the Hon'ble Supreme Court in the case of Union of India -vs- Rabia Bikaner & Ors. reported in 1997 SCC (L&S) 1534, where the Apex Court was considering the question whether the widow of a casual labourer in railway establishment, who died after putting in six months' service and obtaining the status of a temporary workman but before his appointment to a temporary post after screening, was entitled to family pension or not. It was held as under:-

"It is true that under para 2511 of the Railway Establishment manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants but this does not entitle them to family pension. Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merits as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of one year in the temporary post. If any of those employees who had put in the required minimum services of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension in all these cases, though some of the deceased employees had been screened, yet appointments were not given to them since temporary posts were not available or in some cases they are not even eligible for screening because the posts became available after the death. Under these circumstances, the

2

respondent-widows are not eligible for family pension benefits. However, if any amounts have already been paid pursuant to the orders of the Administrative Tribunal, the same may not be recovered from them."

15. The present case, I find, is fully covered by the decision rendered by the Supreme Court in Rabia Bikaner's case (supra) which has in turn been relied upon by the Calcutta Bench of this Tribunal. The deceased employee in the present OA had no doubt acquired temporary status. However, he had not been appointed against any temporary or permanent post in the regular establishment before he died in May, 1995. In this view of the matter, his widow and children cannot be said to be eligible for receiving the benefit of family pension.

16. For the reasons mentioned in the preceding paragraphs, the present OA is found to be devoid of merit and is dismissed without any order as to costs.

*Dr*

*S.A.T. Rizvi*

(S.A.T. Rizvi)  
Member (A)

/sunil/