

15

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1209/88

New Delhi, this 18th day of March, 1994.

HON'BLE SHRI C.J.ROY, MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

Smt. Nirmala Devi
Wd/o Shri Rajinder Singh,
V&PO Chandawas,
Tehsil Rewari,
Distt.Mohindergarh (Haryana) .. Applicant
(By Shri V.P.Sharma, Advocate)

Vs.

Union of India through:

1. General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway, Bikaner.
3. Secretary,
Railway Board, New Delhi. ... respondents
(By Shri P.S.Mehendru, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

This application has been filed by the widow of late Rajinder Singh who died on 14-5-85 while in service with the Northern Railway at Hanumangarh. At the time of his death, the deceased was working as Khalasi in Signals & Telecommunications Department. This O.A. has been filed for a direction that his widow is entitled for family pension from the date of death of her husband.

2. In the O.A. it has been claimed that the deceased was a regular/permanent employee of the Railway Department but in the counter it has been denied that the deceased was a regular employee. It has been stated that the deceased was granted temporary status and till his death he had only 2 months 13 days service at his credit.

3. During arguments the ld. counsel for the respondents initially laid the emphasis on the

fact that the employee was working as a Substitute. However, at the later stage of arguments, much emphasis was laid on the earlier position of the employee as a casual labour with temporary status. Certain citations where family pension has been allowed to widows of casual labour with temporary status were also referred.

4. To know the actual status of the employee- whether he was regular or substitute or casual labour with temporary status, the respondents were directed to produce relevant records. From the perusal of the records, we note that the employee was engaged as casual labour on 11-8-77 (Record of service as casual labour No.177113 issued by the Northern Railway). He was engaged in various spells for a total of 299 days between 11-8-77 and 13-4-80 and for 454 days between 22-3-82 to 11-7-83. These are the only entries found in the Casual Labour Card.

5. In the file No.PST/732 E-1/S&T/R.S. we have noted that the appointment of the deceased as substitute khalasi has been approved by the competent authority on 1-3-85. Accordingly, an order to the same effect was issued on the same date appointing Shri Rajinder Singh as a substitute khalasi. Hence the issue to be decided is whether the widow of a substitute khalasi who has worked for 2 months 13 days will be eligible for family pension.

6. The ld. counsel for the applicant was insistent that the employee had functioned as a casual labour with temporary status for a long time and as such the benefit of family pension which has been allowed by the Calcutta Bench of this Tribunal in the following cases should also

be extended to the applicant in this O.A.

1. ATR 90/92(1) CATR 1992(1) C.A.T.141
Malati Kar (Smt.) & Ors. Vs. UOI & Ors.
2. 1993(2) ATJ p.126.
Gita Bala Samanta Vs. UOI & Ors.
3. 1990(6)SLR p.270
Joydeb Santra Vs. UOI & Ors.

We have already observed that the employee did not die as a casual labour with a temporary status but as a 'substitute' which is a different category. In the cases decided by Calcutta Bench of this Tribunal (quoted supra) the main ground for allowing the respective O.As was that the concerned employees had put in from 13 to 20 years of service as casual workers and the respondents had not regularised them for such a long time. It was held that the widows should not be allowed to suffer due to inaction of the respondents in not regularising the casual workers for such a long period.

7. The ld. counsel for the respondents referred to AIR 1988 SC 390 where after deciding some other aspects, with regard to pensionary benefits of casual labour acquiring temporary status, the following order was passed:-

"12. It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the ld. Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees."

8. Subsequently in C.M.P.No.31378 of 1988 in the same writ petition before the Supreme Court,

the following modification was ordered:

"The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are temporary employees. In paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission of Mr. Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented."

It is the case of the respondents that even after the modification the eligibility for family pension of widows of casual labour with temporary status does not automatically get established let alone the eligibility for pension for casual labour with temporary status. We do not think it necessary for us to go into this issue since the applicant in this O.A. is a widow of an employee who was a 'Substitute' and it would be appropriate to examine the eligibility as applicable to 'Substitutes'.

9. It will be advantageous to reproduce the Indian Railway Establishment Manual (Vol.I)'s provision with regard to 'Substitutes'.

"SUBSTITUTES.- 1512. Definition.-

"Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary

19
railway servants and which cannot be kept vacant.

1513.- Circumstances under which substitutes can be recruited:-

- i) Ordinarily there should be no occasion to engage Substitutes having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.
- ii) As far as possible Substitutes should be drawn from a panel of suitable candidates selected from Group 'C' and 'D' posts and should be engaged subject to the observations made in (i) above, only in the following circumstances:-
 - (a) Against regular vacancies of unskilled and other categories of Group 'D' staff requiring replacement for which arrangements cannot be made within the existing leave reserve.
 - (b) Against a chain vacancy in the lower category of Group 'D' staff arising out of the incumbent in a higher Group 'D' category being on leave, where it is not possible to fill the post from within the existing leave reserve.
 - (c) Against posts in categories for which no leave reserve has been provided.
 - (d) Against vacancies in other circumstances notified by the Railway Board from time to time.

1514. Emoluments payable to the Substitutes.- Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy.

1515. Rights and privileges admissible to the Substitutes.- Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous

20

for all purposes except seniority on their eventual absorption against regular posts after selection.

NOTE.- The conferment of temporary status on the substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Railway Recruitment Board Examination will be entitled to relaxation of age by the period of service as substitute subject to the age of 35 years not being exceeded, provided he has put in 3 years (at one stretch or broken) service as substitute/casual labour.

Bd's No.E(NG)II/79/CL/17 dt.28-4-79."

10. We note that the deceased was a 'Substitute' having put in service for only 2 months and 13 days and thus does not get the rights and privileges as admissible to even temporary railway servants.

Rules regarding pension/family pension are applicable only to railway employees whether they are permanent or temporary as per Rule 101 of Manual of Railway Pension Rules, 1960, after they enter service. No rules that substitutes will be eligible for such benefits could be shown by both parties. A Substitute has to be absorbed/appointed to railway service as per his turn (Note under para 1515) and till such absorption takes place, he is not on the same footing as even a temporary employee. In the circumstances of this case, the O.A. is dismissed. No costs.

P.T. Thiruvengadam
(P.T. THIRUVENGADAM)
Member(A).

'MALIK'

C.J. Roy
(C.J. ROY)
Member(J)

12/3/79