

Central Administrative Tribunal
Principal Bench, New Delhi

24

O.A. NO.1257/2004

New Delhi, this the 26th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Smt. Urmila Devi

... APPLICANT

(By Advocate: Shri B.S. Mainee)

VERSUS

1. Union of India & Others.

... RESPONDENTS

(By Advocate: Shri Rajinder Khatter)

1. To be referred to the Reporter or not.

✓
Yes / No

2. To be circulated to other Benches or not.

✓
Yes / No.



(Mukesh Kumar Gupta)
Member (J)

25

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1257/2004

Monday, this the 26th day of September 2005

Hon'ble Shri Mukesh Kumar Gupta, Member (J)

Smt. Urmila Devi
W/o Late Shri Ramesh
Qr.No.276-A, Pan Dariba
Railway Colony
Aligarh

..Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway, Allahabad
3. The Inspector of Works
Northern Railway, Aligarh

..Respondents

(By Advocate: Shri Rajinder Khatter)

ORDER

By the present OA, a direction is sought to the respondents to release family pension with arrears and interest @ 12% p.a.

2. The facts, which are required to be noticed, are that initially the applicant's husband was engaged as casual labourer and later, he was granted temporary status of Casual Gangman. He expired on 9.10.1991. Applicant being the widow laid a claim with the concerned authorities for grant of family pension as well as compassionate appointment by stating that she besides two small children were starving and they had no means of livelihood. On an appeal made to Divisional Railway Manager, Allahabad, she was appointed as casual labour, Assistant Mali (daily rated) vide communication dated 27.1.1995. On being declared medically fit, she was appointed in the said capacity vide communication dated 19.4.1995. Even thereafter, it is contended that neither the appointment on compassionate grounds nor the family pension or other benefits had been released.

/s/

She had been made to run from pillar to post but it did not yield any positive result. Even the personal meeting with the higher officials produced no desired results.

3. Shri B.S. Mainee, learned counsel appearing for the applicant, with reference to the grounds raised in the OA, contended that applicant's deceased husband had been serving with the Railway Administration for eight years prior to the date of his death and in accordance with rules and law on the said subject, the applicant was entitled to family pension, provident fund and gratuity, etc.

4. The respondents contested the applicant's claim and stated that the applicant's late husband was granted temporary status of Casual Gangman in the pay scale of Rs.200-250/- w.e.f. 25.10.1985 and he expired on 9.10.1991. In terms of Rule 75 of Railway Services (Pension) Rules, 1993, the applicant is not entitled to either family pension or death gratuity. Casual labourers are not covered under the definition of railway servant as defined under Rule 3 (23) of the said Rules. Terminal gratuity amounting to Rs.4691/- admissible to her under the provisions of Gratuity Act 1972 had already been passed for payment under CO 7 No.3663 dated 16.8.1993. Similarly, the provident fund money of Rs.5745/- had also been passed for payment under CO 7 No.7732 dated 7.1.1993. The applicant has been provided the benefit of compassionate appointment in a casual capacity in terms of rules applicable and admissible to the ward of the deceased temporary status casual labour.

5. The applicant by filing rejoinder contested the plea raised by the respondents and reiterated her submissions made in the OA. It was stated in para 4.1 that the applicant's late husband was working as casual labour from the year 1975 as a Gangman and had been working continuously under IOW Aligarh and further that he was granted temporary status after expiry of 120 days of service as per rule contained in IREM Volume I.

6. I have heard both sides at length and perused the pleadings carefully.

7. Shri B.S. Mainee, learned counsel for applicant strenuously urged that since the applicant's late husband had been working from 1975 till 1991, when he died, as per the law laid down on the said

subject by various celebrated judgments, the details of which are noticed hereinafter, the applicant is entitled to pension and pensionary benefits. Strong reliance has been placed by him on the following judgments:

1. 1996 (1) SLJ (SC) 116 (**Ram Kumar & others v. Union of India & others**),
2. 2002 (1) ATJ 81 (**Smt. Latifan v. Union of India & others**),
3. 2000 (3) ATJ 238 (**Eluri Marthamma v. Divisional Railway Manager, S.C. Railway & others**),
4. 1992 (1) ATJ 543 (**Smt. Malati Kar & others v. Union of India & others**),
5. 1997 (1) SLJ (CAT) 185 (**Smt. Mithai Devi v. Union of India & others**),
6. ATJ 2004 (1) 556 (**Smt. Meena Devi v. Union of India & others**);
7. (1996) 7 SCC 27 (**Prabhavati Devi v. Union of India & others**); and
8. OA No.122/2000 (**Premwati v. Union of India**) decided on 5.3.2001.

8. The respondents, on the other hand, through Shri Rajinder Khatter, learned counsel, placed reliance upon JT 1997 (6) SC 95 (**Union of India & others v. Rabia Bikaner etc.**), 2001 (3) ATJ 347 (**Smt. Rasapalli Komaramma v. Union of India & others**) and 2002 (2) ATJ 318 (**Somoti Dai v. Union of India**).

9. I have carefully perused the judgments cited by the learned counsel for applicant and I am of the considered opinion that none of them is applicable in the facts and circumstances of the present case. I may note at this stage that a Full Bench of this Tribunal at Calcutta in **Gita Rani Santra v. Union of India & others** decided on 20.6.1997, as reported in Administrative Tribunal Full Bench Judgments 1997-2001 page 295, considered the following issues:-

“(i) Whether despite non-regularisation of a casual labour with temporary status against a regular post, who has been working continuously for a long period, shall be deemed to have been regularized on the date of death of such an employee in harness irrespective of availability of any post, for the purpose of sanction of family pension to his family or shall be deemed to have been regularized on the date of attainment of normal age of superannuation for the purpose of sanction of normal pension in his favour in the context of provision of rule

31 of the Railway Services (Pension) Rules, 1993 read with provision of para 2005 of IREM, Vol.II, 1990 Edn. Or provisions of rules 101, 102 and 409 (ii) of Manual of Railway Pension Rules, 1950;

(ii) If the answer to the above question is in the affirmative, what should be the minimum period of continuous service of a casual labour with temporary status prior to the death of such employee or superannuation as the case may be, for the purpose of deemed regularization?"

The said Full Bench after noticing, the judgments in **Ram Kumar, Prabhavati Devi and Malati Kar** (supra), besides hosts of other judgments, came to the following conclusion:-

"14..... The question is now what should be the minimum duration for such service rendered by a temporary railway servant for getting family pension by the wife/widow on the basis of deemed provision for regularisation. Considering the fact that a regular Railway servant can claim pension after rendering 10 years of qualifying service and that the service rendered by the casual labour with temporary status is counted only to the extent of 50% for computation of qualifying service, we consider that 20 years period is a reasonable one.

15. In view of the above analysis we answer the reference as below:

- (i) Yes
- (ii) 20 years
- (iii) The case may be remanded to the respective referring Bench for decision in the light of the principle enunciated above." (emphasis supplied)

10. I may note at the outset that the aforesaid law, as noticed hereinabove, particularly the Full Bench of this Tribunal, has not been noticed in the judgments rendered thereafter, in any of the judgment noticed hereinabove, which, in my respectful view, is binding upon this Bench of this Tribunal.

11. **Ram Kumar** (supra) was basically an issue arising out of Civil Miscellaneous Petition (hereinafter referred as CMP) No.31378 of 1988 in Writ Petition (Civil) Nos. 15863-15906 of 1984 decided on 2.12.1987, as reported in AIR 1988 SC 390. The basic issue considered in the said case had been whether the casual labourers working for periods varying between 10 to 16 years in the Construction Department of the Signal Unit in the Northern Railway were entitled to be treated as temporary servants and could be paid

discriminatory rates of wages. After noticing the provisions of para 2511 of IREM dealing with the casual labourers, it was directed that the Railway Administration should take prompt steps to screen such of the petitioners, who have not yet been tested for the purpose of regularization. Para 13 of the said judgment noticed that out of forty-four petitioners, sixteen had already been empanelled and eleven seem to have joined, while seventeen were continuing on temporary status basis. The Hon'ble Court noticed that in **Inderpal Yadav v. Union of India**, 1985 (2) SCC 648, the Railway Administration had been directed to frame a scheme for absorption of casual labourer. By the said CMP, the basic grievance was non-regularization of 12 persons. It had been pointed that based upon Railway Board's instructions dated 20.1.1985, those who had already worked for more than 5 years had become entitled for regularization in class 3 post. Noticing such contention, the Railway Administration was called upon to give effect to the said instructions and consider the case of those 12 persons for regularization against class 3 posts, subject to their satisfying requirements laid in the Board's instructions. Shri Mainee, learned counsel relied upon the following observations of the Hon'ble Supreme Court from the judgment in **Ram Kumar's case** (supra):-

"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." (emphasis supplied)

In my respectful view, the aforesaid observations do not advance applicant's claim in any manner.

12. In **Smt. Latifan's case** (supra), the applicant's husband was initially appointed as casual Khalasi on 12.2.1969. He was screened and regularized in terms of letter dated 19.3.1980. He expired on

6.2.1990. In other words, applicant's late husband, therein, was in employment under the respondents-Railways for nearly 21 years. In **Eluri Marthamma's case** (supra), the facts were that the petitioner's husband died on 18.1.1980 and on the said date, he was a casual labourer. He had worked continuously and uninterruptedly for 15 years under Permanent Way Inspector and acquired the status of temporary servant under sub-rule 3 (b) of rule 2311. Based on the judgment rendered in **Prarbhawati's case** (supra), the widow was treated as 'substitute' and afforded all rights and privileges as admitted to "temporary railway servants".

13. As far as the decision in **Smt. Malati Kar's case** (supra) is concerned, the said judgment had been taken note of by the Full Bench in **Gita Rani Santra's case** (supra) and since the SLP had been dismissed against the said decision of **Malati Kar**, it was held that the said judgment was final and binding between the parties. In **Smt. Mithai Devi's case** (supra), the applicant's deceased husband, who was a casual labourer for 15 years and had been given temporary status, was screened for regularization but could not be regularized due to hospitalization, which ultimately resulted into his death. Her husband was appointed as a casual labourer on 15.5.1976 and conferred temporary status on 1.1.1982. He was scrutinized for absorption in the year 1987 and his name was included in the select/screened test under order dated 28.11.1989. But before he could be appointed against a regular group 'D' post, he died in harness on 19.6.1990.

14. **Smt. Premwati** (supra) was a 'substitute' Safaiwala and as such would be inapplicable in the facts and circumstances of the present case.

15. As far as the judgments relied upon by the respondents are concerned, I may note that that **Rabia Bikaner** (supra) had a decision dated 7.7.1997 while the **Prarbhawati Devi** was dated 16.11.1995. I may also note that the judgments in **Ram Kumar** and **Prarbhawati Devi** both had been noticed and considered in **Rabia Bikaner**. I may further note that **Prarbhawati Devi** basically was a case where her deceased husband had acquired a status of 'substitute' in terms of Rule 2315 of IREM. The question, which had been considered in **Rabia Bikaner's case** was "*whether the widow of a casual labourer in Railway Establishment, who died after putting the*

six month's service and obtaining the status of a temporary workman but before his appointment to a temporary post after screening is entitled to family pension under the 1964 Family Pension Scheme?"

16. After noticing the Railway Board's letter dated 26.10.1965 on the 'Family Pension Scheme for Railways employees, 1964 as well as judgment noticed hereinabove, it was held that the view taken by the Tribunal in granting the pensionary benefits to the respondents, therein, was illegal and the respondents' widows were not eligible to the family pension benefits. Similarly, in **Somoti Dai's case** (supra), a Division Bench of the Rajasthan High Court considered the provisions of para 2311 (3) (b) of IREM as well as the judgment in **Rabia Bikaner's case** (supra) and held that the widow of a casual labourer whose services were not regularized till his death was not entitled for family pension and no retrial benefit to his widow could be given.

17. I may note that **Rabia Bikaner's case** (supra) being the latest in series from the Hon'ble Supreme Court, is binding upon this Tribunal, particularly when all judgments referred prior to the said case had been taken note of and considered therein. In the present case, the applicant's husband had neither rendered 20 years of service, nor screened for regularisation or was a 'substitute'. As such, the judgments relied upon by the learned counsel for applicant would be inapplicable to the facts and circumstances of the present OA.

18. In view of the analysis of facts and law laid down hereinabove, I find no merit in the present OA, which is accordingly dismissed, leaving the parties to bear their own costs.


(**Mukesh Kumar Gupta**)
Member (J)

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