

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Allahabad This The 21st Day of July, 2000

Original Application No. 518/1996

CORAM:

Hon'ble Mr. S. Biswas, A.M.

Chandra Devi Bhatt, wife of
Late Sri Mathura Dutt Bhatt,
aged about 35 years, r/o Village
Ruena, Post Bharkatiya, Distt.
Pithoragarh, U.P.

-----Applicant

(By Adv: Sri K.P. Srivastava)

Versus

1- Union Of India through the Secretary,
Ministry Of Communication, Govt. Of India
New Delhi.

2- The Chief P.M.G., U.P. Circle,
Lucknow.

3- The Supdt. Of Post Offices,
Pithoragarh, Division, Pithoragarh

----- Respondents

(By Adv: Sri S.C. Tripathi)

S. O.

O R D E R

(By Hon'ble Mr. S. Biswas, A.M.)

Claiming family pension, the applicant has contested the order dt. 26-2-96, as communicated to him vide order dt. 7-3-96 by respondent No. 3 (Annexure-1) on the following grounds.

2- The applicant served the respondent's Department for 16 years as Chowkidar w.e.f. 15-9-78 till his death on 26-11-94. He was given temporary status on 29-11-89 in terms of Apex Court order regarding Casual Employee in Group 'D' posts. The said decision of the Hon'ble Supreme Court was circulated under the circular no. 45-95/87-S. P.B. dt. 12-4-91. The learned counsel for the applicant has averred that the deceased employee was, the husband of the applicant, his name was shown in Serial No. 5 of the order dt. 29-11-89 (Dte of temporary status order is dt. 14-7-93).

3- The applicant's counsel has cited her claim in the light of rule 154(a) of P&T manual on pay est. as per this rule, whole time contingent paid staff are expected to work side by side with regular employees. Such employees are required to be regularised and treated as regular employee.

4- The citations in support of the cause of action are as under:

"In O.A. 429 of 1992 in Bhagabati Nayak (Smt.) vs. Union Of India and others, C.A.T. 93 Calcutta."

5- The learned counsel for the applicant has also filed at the time of hearing, a copy of the case of M.G. Remani Bai vs. Union of India and others in (1997) 36 Administrative Tribunals Cases 603 in O.A. 1268 of 96, decided in August, 1997. In this case, the relevant instructions are as under:

"Hon'ble Supreme Court rendered the ruling in Prabhavati Devi Case. Their Lordships in paragraph 5 of the judgment observed as follows:

"On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for

support L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Union of India Vs. Basant Lal. We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal overlooking as it does the ~~chain~~ in consequence making the deceased ~~acquire~~ a temporary status and on his demise his widow and children acquiring the right to claim family pension."

"The argument of the learned counsel for the respondents basing on the decision of the Supreme Court in Rabia Bikaner that the dictum of the Supreme Court in Prabhavati Devi case is no more a precedent to be followed, is only to be rejected. In Prabhavati Devi case, the Apex Court was considering the rights of a ~~widow~~ of a substitute who died before absorption on a regular post whereas in the cases of Sukanti and Rabia Bikaner, what was considered was the cases of widows of casual labour who had attained temporary status but died before absorption on a post. There is considerable difference between the rights and privileges that are due to a casual labourer who has attained temporary status and a substitute who has continuously worked for a period of one year. In case of a casual labourer with temporary status, on eventual absorption on a regular post, half the period of casual service after temporary status alone is to be counted in computing the qualifying service for pension, whereas in the case of a substitute on regular absorption without break the entire service as substitute is to be reckoned as qualifying service of pension. The reason for this distinction is that a substitute is working against a regular sanctioned post, whereas the casual labourer is being engaged for casual work and not against any sanctioned post. In the judgment in Rabia Bikaner case, the distinction between the case of a substitute and a casual labourer has been very clearly discussed. The decision in Prabhavati Devi case was distinguished as that was a case of widow of a substitute claiming family pension in contradistinction to the applicant's husband, who was a casual labourer in Rabia Bikaner case. Therefore, the argument of the learned counsel that in view of the decision in Sukanti case and Rabia Bikaner case the dictum in Prabhavati Devi Case is no longer to be followed, has no force at all."

6- The D.A. has been contested by the learned counsel for the respondents basically on the following grounds. The husband of the applicant who was the Chowkidar since 1978, was only a part time ~~10~~ Casual employee with the respondent's Department. He was not regularised

as per department's policy instructions and casual employee is not eligible for family pension. He was not regularised at the time of his death. In this case, the said Chowkidar, the husband of the applicant was working 4 to 5 hours and therefore he was never regularised though it is not denied that he was continuously engaged as a Chowkidar since 1978 till 1994 when he expired.

7- The counsel for the applicant further mentions that the impugned order dt. 7-3-96 (Annexure-1) is actually the rejection order of his representation made by the applicant for compassionate appointment. Therefore even if this order is quashed, the applicant will not be eligible to get her cause of action vindicated. In other words, ~~she~~ had not made any representation with regard to pensions and pensionary benefits to the proper authority. The application is, however, not contested as a time barred case during the hearing.

8- I have heard the counsel for the applicant carefully. It is an undisputed matter that the applicant's husband was continuously engaged as a Chowkidar after 29-11-89 when he was given temporary status. Thereafter, he became salaried employee and continued in that capacity upto 26-11-94 which clearly constitutes 5 years service with temporary status. Therefore, the argument of the learned counsel for the ~~applicant~~ ^{applicant} that he was not regularised is not fully sustainable at least after 29-11-89. Accordingly, the husband of the applicant had served for nearly 5 years with temporary status, if this period is held as temporary, with other things remaining equal, after his death, the plea of eligibility of family pension becomes maintainable. In this connection the order of the Hon'ble Supreme Court as cited in the case of M. G. Remani Bai Vs. Union Of India and others (Supra), it is clearly held:

"On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Union Of India Vs. Basant Lal. We have put the proposition of the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal overlooking as it does the chain in consequence making the deceased acquire a temporary status and on his demise his widow and children acquiring the right to claim family pension."

9- *With the relevant* ^U *this has been discussed at length in the case M.G. Remani Bai Vs. Union Of India and the claim for family pension was entertained by Calcutta Bench in the case of Widow of a substitute.*

10- A limited question, however, was raised by the learned counsel for the respondents that this case is not relevant as the widow is not of a substituted employee. I am unable to agree to this, as it is a clear case of continuous service rendered by the employee in this case, from the date of regularised ^{as temporary} on 29-11-89. The deceased employee had rendered continuous service with the status of a temporary employee. It makes no difference whether he was substituted or an employee with a temporary status. A temporary status holder is eligible for regularisation. I have also considered in this connection the circular of the respondents dt. 8th December, 1992 (A-7). It reads as follows:

" In their judgment dt. 29-11-89, the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary group 'D' employee of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

In compliance with the above said directive of the Hon'ble Supreme Court it has been decided that the Casual Labourers of this department conferred with temporary status as per the Scheme circulated in the above said circular No. 45-95/87-SPB,I dt. 12-4-91 be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service.

11- In this situation, there is no doubt that temporary status holders are to be treated as a temporary Group 'D' for the purpose of eligibility of family pension.

12- In view of the above, the application is maintainable. However, it is necessary to observe that though the application seeks the limited remedy of family pension, the order dt. 7-3-96 is not relevant to the contest. Therefore, on the ground of relief sought,

the application is allowed. The family pension should be completed by taking length of service w.e.f. 29-11-89. The O.A. is accordingly allowed with the following direction. The family pension and pensionary benefits as applicable to temporary Group 'D' employees shall be worked out and paid to the applicant within 4 months of receipt of this order.

13- No order as to costs.

S. B. *.....*
A.M.

/ Abhishek/