

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 518 of 1997

Allahabad this the 5th day of June 1998

Hon'ble Mr. S.K. Agarwal, Member (J)

Smt. Phulwasa Devi W/o Late Sundar Lal, aged about 48 years,
R/o 117/I/443, Kaka Dev, Kanpur, - 208025.

Applicant

By Advocate Sri O.P. Gupta

Versus

1. Senior Superintendent of Post Offices, City Division,
Kanpur - 208001
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Union of India through Secretary, Ministry of Communi-
cation, Government of India, New Delhi.

Respondents

By Advocate Km. S. Srivastava

O R D E R

By Hon'ble Mr. S.K. Agarwal, Member (J)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed to set aside the impugned order dated 17.7.96 and respondents be directed to grant and pay pension to the applicant as it was being paid to her before February, 1995. The prayer is also for payment of all amounts of insurance to the applicant as the deceased employee was found entitled on completion of 3 years of service after grant of temporary status.

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2. The facts of the case as stated by the applicant are that the applicant is the widow of the deceased - Sundar Lal, C.P. Chowkidar who was appointed on 01.7.82 in Naveen Nagar Post Office at Kanpur and worked continuously till death on 08.5.94. It is submitted that deceased employee was granted temporary status w.e.f. 29.11.1989 in the light of the circular dated 12.4.91 issued by Government of India as per Supreme Court decision on 29.11.89. As such he was granted all benefits of a temporary group 'D' employee w.e.f. 29.11.1989. It is submitted that after the death of her husband the applicant was also granted provisional pension of Rs.765/- per month by order of Superintendent of Post Offices dated 12.8.94 and the same was to be paid w.e.f. 09.5.94 to 08.11.94. The applicant also received post retirement benefits except the amount due for insurance. It is submitted that the applicant was paid pension till February, 1995 and thereafter the same was stopped without any previous notice. The applicant submitted representation before S.S.P. and met personally for continuance of her pension but with no effect. Ultimately she represented before Director of Accounts(Postal) for further grant of pension to her but no reply was received from the respondents. The applicant also raised the matter through departmental union and ultimately the applicant's claim for grant of pension was rejected vide impugned order dated 17.7.96 on the ground that deceased employee could not complete 3 years of service after grant of temporary status as such not found entitled for benefits of para-3 of Circular dated 30.11.1992. It is submitted that rejection of continuity of pension is wholly illegal and not based upon any cogent reason. It is submitted that by the

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circular dated 30.11.92, it was clarified that those who were granted temporary status in view of circular dated 12.4.91 and have completed three years service thereafter, entitled for all benefits of temporary group 'D' employee as contained in circular dated 30.11.92. The deceased employee was initially appointed as C.P. Chowkidar w.e.f. July, 1982 and continuously worked till his death on 08.5.94. He was granted temporary status w.e.f. 29.11.89 and received all the benefits of temporary status w.e.f. 29.11.1989. Thus, he completed more than 4 years service after grant of temporary status till his death in May 1994 and ^{became} fully entitled for all benefits as mentioned in Circular dated 30.11.1992 including the benefit of pension and insurance, but respondents wrongly interpreted the matter and deprived the applicant from pensionary benefits. It is, therefore, requested that impugned order dated 17.7.96 be set aside and respondents be directed to grant and pay pension to the applicant as it was being paid to her before February, 1995 and to grant the applicant the whole amount of insurance as the deceased employee was found entitled on completion of 3 years service after grant of temporary status.

3. The counter-affidavit was filed by the respondents. In the counter-affidavit, it is stated that Late Sunder Lal Yadav was engaged against the post of C.P. Chowkidar of Naveen Nagar Post Office, Kanpur on 01.7.1982 who was conferred with temporary status vide order dated 30.5.97. It is stated that Late Sunder Lal Yadav was expired on 08.5.94. It is also submitted that respondent no.1 sanctioned provisional pension to Smt. Phulwasa Devi-wife of the deceased employee vide memo dated 12.8.94. This provisional pension was sanctioned only for a period

of 6 months. The pension case of the said deceased employee was sent to the Director of Accounts(Postal) on 12.8.94 for finalisation of family pension and D.C.R.G. The Director of Accounts(Postal), Lucknow examined the case and returned it back with clarifications about admissibility of pension and death-cum-retirement gratuity vide its letter dated 31.8.94 with further clarification vide letter dated 16.11.1995. The matter, therefore, was referred to the Post Master General, Kanpur Region, Kanpur vide letter dated 02.1.96 and the Post Master General, Kanpur vide his letter dated 03.10.1996 informed that the deceased was not employed on pensionable establishment and, therefore, the family of the deceased employee is not entitled for pension. It is also submitted that deceased employee was engaged as contingent paid Chowkidar and the dependents of the deceased employee are not entitled ~~for~~ all the benefits granted to the dependents of group 'D' employee. It is also submitted that deceased employee was not regularised as group 'D' employee and was not borne on the pensionary establishment after which he or his dependents in case of his death were entitled for pensionary benefits. It is made clear ~~that~~ vide para 8 of the letter dated 03.10.1996 that after rendering three years service, the temporary status conferred and contingent paid Chowkidar will be treated at par with group 'D' employee for the purpose of contribution to General Provident Fund/Festival Advance/Flood Advance on the conditions applicable to temporary group 'D' employees. It is further submitted that circular dated 12.4.97 (annexure A-6), nowhere directs that the deceased employee will be provided with all the benefits applicable to group 'D' employees. Therefore, the applicant is not entitled to family pension. It is also stated that the applicant is not entitled

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to any insurance amount and the present petition is wholly devoid of any merits and is liable to be dismissed with cost.

4. I have heard the learned lawyer for the applicant and learned lawyer for the respondents.

5. Learned lawyer for the applicant ~~has~~[✓] submitted that the applicant was allowed family pension vide respondents order dated 12.8.94 but the same was stopped without any reason and basis and no opportunity of hearing was provided to the applicant. He has also stated that deceased employee was granted temporary status w.e.f. 29.11.1989. Therefore, in the light of circular dated 12.4.93 issued by Government of India, the applicant is entitled to family pension. On the other hand, the learned lawyer for the respondents has objected to the above argument and stated that as per provision given in Rule 54 of Family Pension, 1964, the applicant is not entitled to pension. He has also submitted that Hon'ble Supreme Court has also held that family pension is only available to the widow of the deceased government servant who dies after one year of continuous service.

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6. I have given thoughtful consideration to the rival contention of both the parties and perused the whole record.

7. On perusal of Circular no.45-95/87-SPB-I, dated 12.4.91, it has been made clear in para-8 that "after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group 'D' employees for the purpose

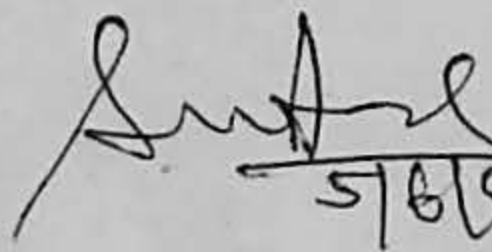
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of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/ Flood Advance on the same conditions as are applicable to temporary group 'D' employees, provided they furnish two sureties from permanent Govt. Servants of this Department."

8. According to this circular, it is abundantly clear that this circular does not make it specific that after rendering 3 years continuous service after conferment of temporary status, the casual labourers would be considered as regularised and after his death the family members are entitled to the benefits of family pension.

9. In 'Ram Kumar Vs. Union of India(1988)2 S.C.R. 138 at 144, the Court had held;

"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 learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees."


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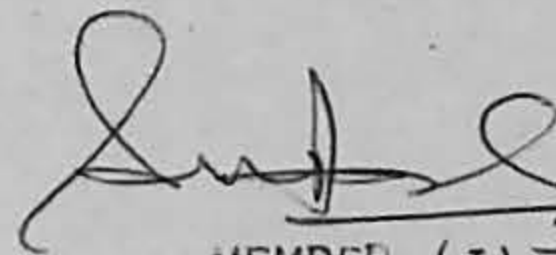
10. In Union of India and Ors.Vs. Rabia Bikaner etc.1998(1) A.I.S.L.J.181(Civil Appeal No. 4373 of 1997, decided on 07.7.1997), the Hon'ble Apex Court has also considered the case 'Prabhavati Devi Vs. Union of India 1996(7) S.C.C. 27' and Malti Kar's case and come to the conclusion that widow of the deceased railway employee

is entitled to family pension only when the railway employee dies after one year of his regular service. The same view has been followed in 'Union of India Vs. Sukanti & Anr. SLP(C) No. 3341/93, decided on 30.7.96.

11. On the basis of the above, I am of the considered opinion that the applicant is not entitled to family pension and respondents did not commit ~~any~~ illegality while passing the impugned order dated 17.7.96.

12. As regards claim of insurance of the applicant is concerned, I do not find any merit and, therefore, the applicant is not entitled to seek any relief as prayed for.

13. In view of the above discussions, I do not find any merit in the O.A. and the same is dismissed with no order as to costs.


MEMBER (J) 5/6/98

/M.M./