

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.1131 OF 2004

ALLAHABAD, THIS THE 20TH DAY OF FEBRUARY, 2007

CORAM:

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

Prema alias Premawati Devi,
Harizan Basti Mauaima Township,
Post Mastu Allahabad Presently
Residing in village Hurakhpur,
Post Hurakhpur Mandhata,
District-Pratapgarha.

.....Applicant

By Advocate: Shri S. K. Pandey

Versus

1. Union of India,
through General Manager,
South Eastern Railway, Garden Reach,
Headquarter Office,
Calcutta.
2. The Divisional Railway Manager,
South Eastern Railway,
Khadagpur.

..... Respondents

By Advocate: Shri K.P. Singh

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

*Law laid down by the Apex Court on entitlement for family pension in
respect of those who died while working as substitutes in the Railways, shall*

apply in this case. The Apex Court has in its judgment in the case of *Prabhavati Devi v. Union of India*, (1996) 7 SCC 27, held as under:-

"3. The appellant herein is the widow of late Bipin Kumar Rai who was a temporary Railway servant in this manner: He, initially, was taken in the Railway Establishment as a casual worker; and w.e.f. 27-4-1983 he acquired the status of a substitute. According to the definition given in Rule 2315 of the terms and conditions applicable to substitutes in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a Railway servant being on leave or due to non-availability of permanent or temporary Railway servants and which cannot be kept vacant.

4. The deceased kept working as a substitute 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. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employees 2 months pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the Central Administrative Tribunal, Patna Bench, Patna, was dismissed which has culminated in this appeal.

5. 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 DSouza v.*

Executive Engineer, S. Rly. and Union of India v. 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.

6. We, thus, allow this appeal; set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the Railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment.

7. The appellant shall get her costs throughout."

2. In its decision in the case of *Union of India v. Rabia Bikaner*, (1997) 6 SCC 580, the entitlement of family pension of a widow of a substitute railway employee was affirmed by explaining the purport of the above decision and the Apex Court has stated in this case as under:-

"5. The learned counsel strongly relied upon the judgment in *Prabhavati Devi v. Union of India*. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellants husband was a substitute working in a regular scale of pay in the Railway Establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that the widow of such employee is entitled to the benefit of the

family pension.

3. Thus, it is settled law that with regard to a substitute railway employee, on his demise after completion of requisite years of service in that capacity, family pension is admissible to the widow or other dependent as per rules.

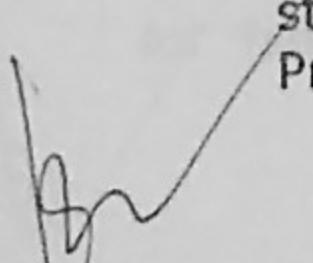
4. Now a look at the facts of the case: Late Mangaroo Prasad, husband of the applicant was appointed as substitute shed khalasi in 1970 and in 1975 he met with an accident while performing his duties, whereby he had lost his two legs. However, he was working in the Railways in a different position and later on in October, 1983, the said Mangaroo Prasad died in Railway Hospital. As the family was not paid the family pension, the applicant through legal notice demanded the same and the respondents insisted upon original death certificate. Despite ^{that been} ~~it~~ having ^{been} made available since the family pension etc., were not made available to the applicant, OA No. 1015/1998 was filed by the applicant, which came to be disposed of vide Annexure A-6 order dated 13-03-2003 and the operative portion reads as under:-

"Now coming to the merits of the case, it is seen that respondents had by their own letters written as late as in 1999 requested the counsel of the applicant to give the death certificate of her husband so that the matter may be processed early. Now the applicant has been able to get the death certificate of her husband issued by the Department of Health and Family Welfare, wherein it is certified that on the basis of information taken from the original record of death, which is in the register of South Eastern-Railway Hospital of Khadagpur, P.S. Midnapur, West

Bengal, Shri Mangroo Prasad had died on 17.10.1983. The applicant has already submitted a representation alongwith document on 9.12.2002, which is evident from Annexure A-3 filed along with the supplementary affidavit, therefore, I am of the considered view that the Div Railway Manager (P), Khadagpur, Midnapur, West Bengal may get the facts verified as submitted by the applicant from their own hospital records and if it is found correct that the applicant's husband had died on 17.10.1983 in the Railway Hospital and, there is no other claimant except the applicant in that case subject to the condition tat the applicant gives the original certificate to the respondents or fulfill any other formality, which is required by the authorities, they may calculate the amount, which are due to the applicant and pay the same to her within a period of 4 months from the date of receipt of a copy of this order. From the facts as narrated above, it is clear that the delay cannot be attributed to the respondents at all because it was applicant's own mistake that she did not give the correct date of birth to the respondents and the respondents had in fact been requesting her all this time to produce the original death certificate so that the case may be processed, therefore, applicant would not be entitled to any interest, on the amount which shall be paid to her. With the above directions, the O.A. stands disposed of. The applicant is directed to co-operate with the respondents fully for finalizing her own case. No costs."

5. The applicant, in the wake of the above order was paid only provident fund dues and as no family pension was paid, the applicant moved Contempt Petition No. 174/03 which was decided vide Annexure A-8 order dated 16.01.2004 as under:-

"We have carefully perused the order dated 30.8.2003. The respondents in the said order have clearly stated that late Mangroo Prasad, husband of the applicant died on 17.10.1983, while his status was a substitute shed Khalasi only. The respondent has categorically stated in the order that as per extant rules substitutes are not deemed to be a Railway Servant, unless they are absorbed in the regular Railway Service, as such family pension or any pensionary benefits are not admissible. The respondent has also stated in the said order that the amount due on account of Provident Fund was already passed for payment on 20.12.1983 ie.



soon after the death of the said Late Mangroo Prasad, husband of the applicant. Perusal of the record of the original file does not establish that the respondents at any point of time accepted the claim of the applicant. The direction of this Tribunal dated 13.3.2003 was to calculate the amount, which may be due to the applicant. The respondents have examined the case and have categorically stated in the order dated 30.8.2003 that no dues are pending for payment to the applicant. The order of this Tribunal stands complied with and no case of Contempt is made out. Applicant may pursue the remedies provided under law if still not satisfied.

In view of the above in our considered opinion, no case of contempt is made out The Contempt Petition is rejected in limine. "

6. Clinging to the liberty given to the applicant in the above order that '*the applicant may pursue the remedies provided under law if still not satisfied*', the applicant has now come up in this OA praying for quashing of order dated 30-08-2003 whereby her claim for family pension was rejected on the ground that the applicant's husband was only a substitute till the time of his death and for a declaration that she is entitled to the family pension and for a direction to the respondents to pay the family pension.

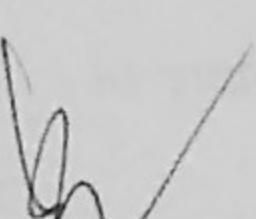
7. Respondents have contested the OA. Their preliminary objection was that the contempt petition having been dismissed, res judicata operates. As regards facts, it is not disputed that the applicant's husband was serving as a substitute and that he died in the Railway Hospital. That the applicant's service as substitute was for a period more than the minimum requirement for family pension has also not been disputed. The contention of the

respondents is that as per the provisions of Rule 3(26) of the Railway Services Pension Rules 1993 cannot be deemed to be a Railway servant for the purpose of the said Pension Rules.

8. Counsel for the parties projected their arguments at the time of hearing and in addition, the applicant has furnished the written submission, on permission granted by this Court. The main emphasis of the counsel for the applicant is that the case is fully covered by various decisions of the Courts and such decisions are as under:-

- (i) Judgment & order dated 22.9.2006 passed by this Hon'ble Court in the case of :
Panna Devi vs. Union of India and others.
O.A.No.306/2005. (Page 14-21)
- (ii) 1996 SCC (L&S) page 369 Prabhawati Devi Vs. UOI & Ors.
(P. 22-23)
- (iii) 1992 (2) ATJ Page 633 Smt. Somsari Devi Vs. UOI & Ors.
(P.24-26)
- (iv) AISLJ (Vol.IV) 1996 (1) page 116 (Full Bench SC)
Ram Kumar & Ors. Vs. UOI & Ors. (P.27-28)
- (v) AIR 1968 SC 1413 (Ful Bencvh) Gopal Kirshna Ji Ketkar vs.
Mohd. Hazi Latif. (P.29-32)
- (vi) (2003) 1 SCC page 184 S.K.Mastan Bee Vs. General Manager
South Central Rly. & Ors. (P.33-36)
- (vii) Judgment and order dated 23.4.2003 passed in OA No.
1537/1999 by this Hon'ble court in Re Mandodari Devi
Vs. UOI & Ors.

Later on this judgment was confirmed on 25.1.2005 by the

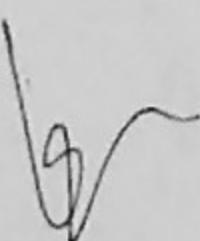


Hon'ble High Court, Allahabad in the Writ Petition No.34859 of 2003. UOI & Ors. Vs. CAT, Allahabad Bench, Allahabad and Ors.

- (viii) ATJ 2004 (1) page 90 Moolia vs. UOI & Ors (P.43-46)
- (ix) ATJ 2002 (1) page 81 Smt. Latifan Vs. UOI & Ors (P.47-48)
- (x) 1993 (25) ATC Page 254 Jamini Bala Bera Vs. UOI & Ors (P.49-51)

9. Arguments were heard and documents perused. The written submission has also been considered. Though original records were called for with a warning that failure to produce the same would entail adverse inferences being drawn against the respondents, till the time of hearing and thereafter too, the original records were not produced.

10. First as to the preliminary objection that the OA is hit by the doctrine of res judicata. According to the respondents, after the contempt petition has been dismissed, nothing survives and the OA is hit by the doctrine of res judicata. This contention deserves summary dismissal as the Tribunal itself has given the liberty to pursue the remedies. The case of the applicant is that she is entitled to family pension as even by the admission of the respondents her husband was functioning as a substitute khalasi and he worked in that capacity for more than a year and thus, the same would suffice for grant of family pension. The applicant has cited various decisions as stated above and the latest among them is in respect of Panna Devi, vide



OA 306/2005, decided on 22-09-2006. In that case the Tribunal has held as under:-

"6. The main question to be decided in this case is as to whether on death of Ram Sumer on 16.3.1983 after serving the railways for more than 9 years with temporary status, his widow is entitled to family pension under the relevant rules. The question appears to be a debatable one as would appear from various judicial pronouncements cited by learned counsel for the parties but before I come to that issue, would like to first dealt with the plea of limitation, raised by the respondents in their reply.

9. The central point in issue is as to whether the widow or other minor children of such a casual labourer dying after more than a year of attaining the temporary status are entitled to family pension or other terminal benefits. This question appears to have been subject matter of various judicial pronouncements of the Apex Court, High Court and various Benches of this Tribunal as will appear from the discussion to follow shortly. There is no controversy on the point that a casual labourer attaining the temporary status as per relevant rules/instructions issued by the Railway Department, becomes entitled to enjoy certain rights such as termination of service and period of notice (subject to the provisions of Industrial Disputes Act, 1947), scale of pay, compensatory and legal allowance, medical attendance, leave rules, provident fund and terminal gratuity, allotment of Railway Accommodation and recovery of rent, Railway passes, advances etc. (see para 7 of Ram Kumar and others Vs. Union of India and others (1987 Supreme court Cases (L&S) page 329). It is true that in Ram Kumar's case (supra) decided in 1988, the Apex Court held that such casual labourer attaining the temporary status will not be entitled to pensionary benefits till their services are regularised and relying on this decision, the Apex Court reiterated in union of India Vs. Rabia Bikaner and others, (1997) 6 Supreme court Cases page 580 that the widow of such employee is not entitled to family pension. These are the two cases which are being heavily relied on by Sri. S.K. Rai learned counsel for the respondents to say that widow of such a casual labourer is not entitled to family pension under the relevant rules. "

10. On the other hand, Sri. Sudama Ram learned counsel for the applicant has contended that in Prabhawati Vs. union of India and others, 1996 Supreme court Cases (L&S) 369 the Apex Court has

struck a different note, relying on its earlier decision in L. Rowest Desoza Vs. Executive Engineer, Southern Railway, 1982 (1) Supreme Court Cases page 645 and Union of India and others Vs. Basant Lal (1992) 2 Supreme Court Cases page 679. He says that the right of widow of such casual labourer to get family pension has been upheld by the Apex Court. He says that relying on this decision of Apex Court in Prabhawati Devi's case (Supra), this Bench of the Tribunal has allowed family pension to widows of such casual labourers in its decision dated 27.3.2003 in O.A.No.874/2000, Smt. Rama Devi Vs. Union of India and others and again in its decision dated 29.4.2004 in O.A.153/99 Smt. Mandodari Devi Vs. Union of India and others and by Principal Bench in its decision dated 27.8.2001 in O.A. No.1287/00, Smt. Latifan Vs. Union of India and others, 2002 (1) A.T.J. Page 81, by Calcutta Bench of the Tribunal in Amind Bala Bera Vs. Union of India and others (1993) 25 A.T.C. Page 254, by Ahmedabad Bench of the Tribunal in its decision dated 21.6.2002 in O.A.No.316 of 1996 Smt Vallam Badia Vs. Union of India and others, by Jaipur Bench of the Tribunal in its decision dated 12.12.2003 in O.A. No.261/02, Moolia Vs. Union of India and others, Administrative Total judgments 2004 (1) page 90 and also by Division Bench of Andhra Pradesh High Court, in Eluri Marthamma Vs. Divisional Railway Manager, S.C.Railwy and others, Administrative Total judgments 2000 (3) page 238 and also by Division Bench of Gujarat High Court in Rukhiben Rupabhai Vs. Union of India and others 2005 (2) Administrative Total judgments page 1. The view taken in some of these judicial pronouncements is that family pension is different to the pension and grant of family pension should not be denied on the ground that casual labourer having attained temporary status was not regularised or screened. It has been said that if such casual labourer having attained the temporary status, has continued working for a number of years, his widow will be entitled to family pension under the relevant rules of 1964 irrespective of the fact whether he was or was not regularised. As regards the view taken by the Apex Court in Ram Kumar's case (Supra) decided in 1988, it was said that the same stood diluted by subsequent decision dated 6.9.90 given in the same case by Hon'ble Three Judges reported in All India Services Law Journal Part 4 - 1996 (1) page 116. Hon'ble Judges and Members deciding the respective cases referred to and relied on by Sri Sudama Ram observed that since the view taken in Union of India and others Vs. Rabia Bikaner case (supra) was based on earlier Ram Kumar's case which was subsequently modified by subsequent Ram Kumar's case so that will not take away the effect of Prabhawati Devi's case and could not be treated to be a

binding precedent.

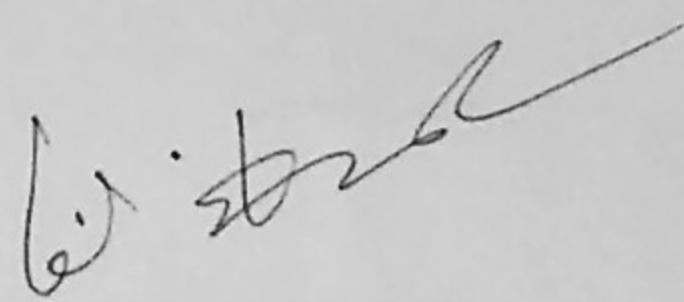
11. Though Sri S.K.Rai, the learned counsel for the respondents has tried to distinguish the cases of Rama Devi and Mandodari Devi (Supra) decided by this Bench but I am of the view that it is difficult to distinguish the same. Not only that similar view was taken by this Bench in a recent decision dated 18.2.2005 in O.A.No.812/03 Smt. Baijnathi Devi Vs. Union of India (Supra). The view taken by this Bench in all three cases is that if the casual labourers attaining the temporary status works for more than a year, his widow becomes entitled to family pension under the relevant Rules of 1964. The cases relied on by Sri. S.K.Rai were considered by the Hon'ble Vice Chairman in Rama Devi's case. The judicial propriety requires me to follow the decision so taken by this Tribunal in different cases referred to above. Some of the decisions relied on by Sri Sudama Ram were rendered by the Division Benches of this Tribunal. It will not be proper on my part, to take view different to one taken in the cases referred to above.

13. This O.A. is allowed and respondents No.1 and 2 are directed to grant to the applicant family pension and other terminal benefits as may be admissible under the relevant rules w.e.f. The date of death of her husband, within a period of four months from the date of certified copy of this order is produced before them failing which they shall also be liable to pay interest @ 9% per annum till the date of actual payment. The applicant shall be entitled to Rs.2000/- as cost of this O.A. from the respondents."

11. The decision by the Apex Court extracted in para 1 and 2 above would suffice to decide this case in favour of the applicant. Added to the same is the latest decision of this Bench in the above case of Panna Devi. The words, "***It will not be proper on my part, to take view different to the one taken in the cases referred to above***" contained in para 11 of the above decision clearly binds me as well.

12. In view of the above, the OA is allowed. It is declared that the

applicant is entitled to family pension and the respondents are directed to get necessary formalities completed for drawal by the applicant of family pension and other terminal benefits, if any, due to the applicant, start paying the family pension to the applicant within a period of two months from the date of receipt of certified copy of this order, and pay the arrears of family pension etc., with interest @ 9% from the date of 01-04-2004 (after the passing of the order dated 13-03-2003 in OA No. 1015/1998) till the date of payment. The time calendared for compliance of this part of the order (i.e. payment of arrears with interest) is six months. As this is the second round of litigation by the applicant, the applicant deserves cost as well, which is quantified as Rs 5,000/- which shall be paid along with arrears as directed above.



Dr. K B S RAJAN
JUDICIAL MEMBER