

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 22nd day of October 2010.

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A

ORIGINAL APPLICATION NO. 1451 OF 2004

Smt. Mulhara, aged about 44 years, widow of late Shri Ram Deen, presently at 510, K.L. Kydganj, Allahabad.

.....Applicant.

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Loco Foreman, Northern Railway, Pratapgarh.

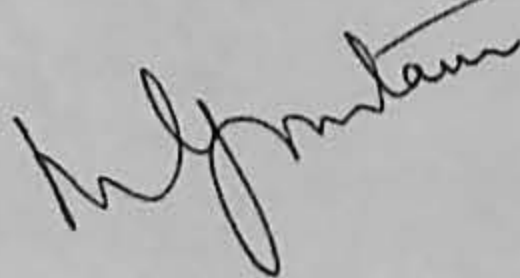
.....Respondents

Advocate for the applicant: Sri Rakesh Verma

Advocate for the Respondents : Sri P. Mathur

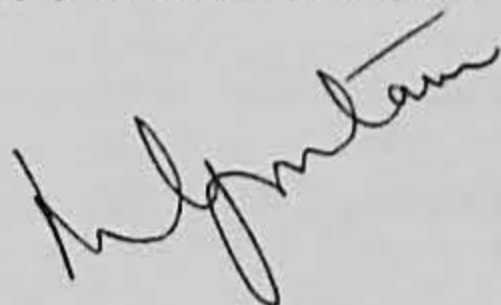
ORDER

The husband of the applicant late Ram Deen was appointed as Substitute Cleaner with effect from 14.07.1978. Shri Ram Deen died on 27.3.1981 and the applicant has made a request for family pension. Accordingly, she filed O.A. NO. 229 of 2000, which was disposed of vide order dated 30.6.2003 giving direction to the respondents to decide the representation of the applicant within a period of 3 months. The representation of the applicant has been accordingly



decided by the respondents vide impugned order dated 16.5.2004 wherein the claim of the applicant has been rejected. The respondents have accepted that husband of the applicant was appointed on 24.7.1978 as Substitute and worked up to 27.3.1981 till his death but he has not been screened and, therefore, not regularized until his death, therefore, his widow is not entitled to the family pension. The impugned order also states that under Rule 3 (26) of Family Pension defines substitute as "*a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary Railway Servant and such substitute shall not be deemed to be a Railway Servant, unless it is absorbed in the regular railway service*". The impugned order also quotes judgment of Apex Court in *Union of India and Ors. Vs. Rabia Bikaner and Ors.* (1997 SCC Vol VI page 580).

2. The applicant in support of her claim has stated that her husband was selected as Substitute and had also qualified in medical examination at the time of selection and thereafter he had worked for 992 days. The applicant has presumed that because he had worked more than 120 days, he would have acquired temporary status and, therefore, she was eligible for family pension. In support of her claim, she has also annexed a judgment of *Central Administrative Tribunal, Jaipur, Calcutta and Lucknow Bench*, which states that widow of a Substitute holding temporary status who died

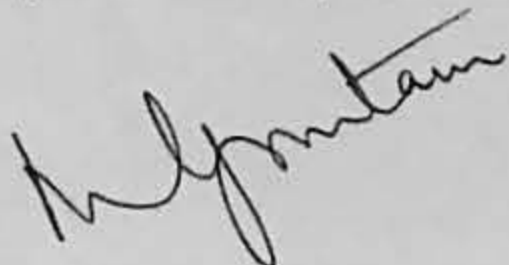


after putting one year continuous service, shall be entitled for family pension.

3. The respondents in the counter affidavit filed by them, have stated that grounds of rejection mentioned in the impugned order are very clear and as per Rules. According to the respondents it is admitted that husband of the applicant was appointed as Substitute and was declared medically fit but there is no record to show that he had been screened and subsequently given temporary status or regularized. The statement annexed by the applicant as Annexure A-2 gives list of Casual Labour/Substitute, who were in continuous service of 120 days as on 30.9.1981. In that list, the name of the husband of the applicant Shri Ram Deen is shown at Sl. NO. 21 and in the remarks it is written that he has expired on 27.3.1981. On the basis of this document, it cannot be presumed that husband of the applicant was screened or regularized.

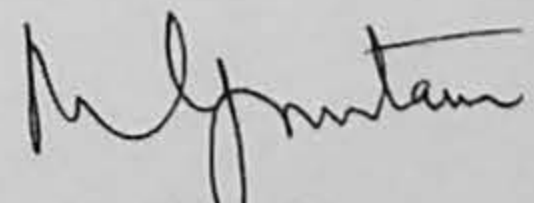
4 In support of their stand, the respondents have referred to *Full Bench Judgment of Central Administrative Tribunal, Principal Bench, New Delhi in O.A. NO. 1722 of 2005, O.A. NO. 9/2006, O.A. NO. 1264/06, O.A. No. 1668/06 and O.A. NO. 272/07*. This order is dated 5.9.2007 and after comprehensively examining the issue of entitlement of pension in the case of Casual Labourer with temporary status. The finding is as follows:-

"Legal representatives of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is essential that before his death, he should have been subjected to screening, and



should have been regularized in service, which only enables the legal representatives to claim the benefit of family pension. This will also be subject to the conditions laid down under the provisions of the Railway Service (Pension) Rules, 1993 or Circulars issued from time to time".

5 I have heard both the counsel and perused the records on file. I have also gone through the various judgments of Apex Court and other Court, which have been referred to by the respondents and applicant. In my opinion in this matter, reliance is to be placed judgment of Full Bench of Central Administrative Tribunal, Principal Bench, New Delhi dated 5.9.2007, according to which the benefit of family pension will be available in case of those deceased employees, who had been screened and thereafter regularized in service. In the present case, there is nothing on record to show that husband of the deceased who was working as Substitute until his death was either screened or regularized. The applicant in her O.A. has confused the fact that her husband had been found fit in the medical examination held on 12.7.1978 and should, therefore, be treated to have been screened whereas this is not so. Screening is done after acquiring temporary status and medical examination of Ram Deen was done in the year 1978 when he was appointed as Substitute. There is nothing to show that Late Shri Ram Deen was screened or regularized in service. Therefore, O.A. is devoid of merit and accordingly dismissed. No costs.


Member (A)

Manish/-