

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD

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(THIS THE 11<sup>th</sup> DAY OF AUGUST, 2010)

HON'BLE MR. S.N. SHUKLA, MEMBER (A)

ORIGINAL APPLICATION NO. 1596 OF 2004  
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Phula Devi w/o Late Dhorah, R/o Loco Colony, P. O. Joghal  
Sarai, Dt. Chandauli.

..... Applicant

*Versus*

1. The Union of India through the General Manager, E.C. Rly.  
Hajipur, Bihar.
2. The Divisional Rly. Manager E. C. Rly, Mughalsarai, Dt.  
Chandauli.

..... Respondents

Present for Applicant:                      Sri S. K. Dey  
   Sri S. K. Mishra

Present for Respondents:                      Sri K. P. Singh

O R D E R

(DELIVERED BY HON'BLE MR. S.N. SHUKLA- MEMBER - A)

This O.A. is filed seeking the following relief/s:-

"(i). That this Hon'ble Court may be pleased to direct the  
respondents to grant and pay the amount of family  
pension with arrears of pension and D.C.R.G.

(ii). Any other relief or reliefs to which she is entitled may  
also be awarded."

2. The facts are that the applicant is a widow of late Sri Dhorah who  
was employed as Casual Labour in the Railways. He passed away on  
19.07.1984. After the death of her husband she was paid Provident



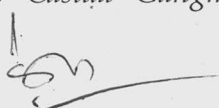
Fund's balance, but she was, however, not paid any D.C.R.G. and pension which she is claiming through this O.A. She was however, given appointment on the post of Peon.

3. Learned counsel for the applicant, also submitted that the applicant has been given compassionate appointment and compassionate appointment is given only to the survivors of a regular employee and by reverse logic it implies that, the deceased was a regularized employee. One report of medical examination has been filed at Annexure A-1 to the OA to substantiate his claim that the deceased was regularized before his death.

4. Learned Counsel for the Respondents has pointed out that, the husband of the applicant died in the year 1984 and she has filed this O.A. in the year 2004 i.e. after a gap of 20 years, and therefore, the O.A. suffers from inordinate delay and laches and deserves to be dismissed on this ground alone.

5. Reliance was placed on counter reply reproduced below:-

*"4(A). That the Gangman Category is safety post, therefore Medical Examination is necessary before engagement of Casual Labour. In order to comply with the existing Rules, Late Dhore was medically examined by Medical Authority on dated 26-02-1975. After that he was engaged as Casual Gangman on dated 07.08.1975. He expired on dated 19-07-1984. Late Dhore was not posted as a regular Group 'D' staff against the permanent post of Gangman. He expired while working as Casual Gangman & not as a*



*Railway servant. In terms of the Railway Services (Pension) Rule 1993 Chapter-I, rule 23, the Casual Labour does not come under the Administrative control of Railway Board's. As such Casual Labour is not a Railway Servant and pension Rule shall apply only to Railway Servant. Late Dhore was not Railway Servant as such applicant is not entitled to get family pension. The photocopy of the prescribed Rule 23 of Chapter-I of Railway Services (Pension) Rule 1993 is enclosed herewith and marked as Annexure-I to this counter."*

6. Learned counsel for the Respondents also pointed out that the medical certificate placed at Annexure-A-1 of the O.A. which is claimed to be the certificate for the medical examination held during the process of regularization of the deceased is, in fact a certificate dated 26.02.1973. A careful reading of the same would show that this medical examination was done for the purpose of "*a candidate for appointment as Casual Labour*" and that the said certificate is sought to be claimed as medical examination held at the time of alleged date of regularization in 1975.

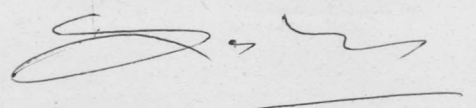
7. Learned counsel for the Respondents also emphasized that, compassionate appointment can be given to the survivors of Casual Labours also and that the fact of giving compassionate appointment to the survivors does not lead to a conclusion or even presumption that the deceased was a regular employee or may be treated as regular employee.



8. Learned counsel for the Respondents on the question of delay and laches as raised by counsel for the applicant relied upon a decision of Hon'ble Supreme Court in the case of S. K. Mastan Bee Vs. General Manager, South Central Railway and another reported in 2003 SCC (L&S) 93.

9. Heard learned counsel for the parties. On the question of delay and laches the law is well settled that, matter of pension/family pension is a continuous cause of action and does not suffer from laches. On facts, however, it is seen that, the Respondents have made a statement in Counter reply that the applicant was not a regular employee of the Railways and no evidence has been brought on record contrary to the averments of the Respondents. Averments made in the Counter have been denied in the Rejoinder Affidavit without giving any evidence. Further, the medical report placed by the applicant as Annexure 'A' is obviously for a different purpose and not as claimed.

10. On the facts, the only conclusion which can be drawn is that, the husband of the applicant was not a regular employee of the Railways and not entitled to pension as per the extant rules cited by the Respondents in their Counter, O.A. stands dismissed. No Costs.

  
Member-A