

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

HON'BLE MR. D.C.LAKHA, MEMBER (A)

Original Application Number. 1627 OF 2005.

ALLAHABAD this the 28th day of January, 2010.

1. Smt. Mandodari Widow of Late Ram Pragas aged about 61 years, R/o Village : Rudai Ka Pura, Post : Bihasara, District : Mirzapur.
2. Indrajeet Son of Late Ram Pragas aged about 39 years, presently working as Trackman under SSE (P.Way), N.C. Railway, Fatehpur- R/o Village : Rudai Ka Pura, Post : Bihasara, District : Mirzapur.

.....Applicants.

V E R S U S

1. Union of India through General Manager, North Central Railway, Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. General Manager, N.C. Railway, H.Q. Allahabad.

.....Respondents

Advocate for the applicant: Sri Sudama Ram
Advocate for the Respondents : Shri Anil Kumar

ORDER

(Delivered by Hon'ble Mr. D.C. Lakha, A.M.) :

This OA has been filed to seek the following reliefs :-

"(i). The Hon'ble Tribunal may graciously be pleased to direct the respondent to consider the compassionate appointment of the applicant no.2 for group 'C' category keeping in view of the Railway Board's instruction dated 6.5.1982 as well as educational qualification of the applicant no. 2.

(ii). Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.

(iii). Cost of the Application may also be awarded."




2. In the facts as narrated in the OA, it is stated that the husband of applicant No.I Late Ram Pragas was working as Gangman under PWI/PQRS/Fatehpur was initially appointed as casual Gangman prior to 1.8.1978 in Allahabad Division and he had attained the status of a temporary railway servant after completion of 120 days in 1978. Even after completion of 120 days of continuous working as per rules his regularization was delayed by the respondents due to administrative lapses. He was medically examined for medical category B which was meant for temporary appointment for the post of Gangman and was declared fit for the same vide memo No.76177 dated 2.2.1984 (Annexure-A-1) and was screened for regular appointment in 1995 well before his death on 2.3.1996. Therefore, he was deemed to have been regularized as a Gangman in 1995 well before his death like his other colleagues who were screened with him. The widow applicant applied for appointment on compassionate ground for her only son named Indra Jeet who had passed High School in 1983, Intermediate in 1985 and B.A. in 1987 much before the death of her husband. The copies of Certificate of educational qualification of applicant No.II has been placed at Annexure-A-2 to compilation No.II. The applicant No.II was offered the post of casual labour in Group 'D' category vide letter No.CS/DPO/CG/Cha.Shre/As-Shra/M/167 dated 27.1.1997 (Annexure-a-3). The Controlling Officer did not treat her husband as a screened and a regular Gangman for the purpose of giving appointment on compassionate ground. That is why applicant No.II was considered and given appointment as a casual labour (Group D) instead of being considered for the post of Group 'C' category. But later on, applicant No.I came to know ^{that} her husband had appeared in

the screening test in 1995 and also passed the same for regular appointment as a Gangman in 1995 and thereafter he continued in service as Gangman till his death.

3. It is also stated in the OA that the applicant No.I was not granted family pension only on this plea that her husband was not a screened Railway employee. For that applicant No.I filed an Original Application No.1537 of 1999 in which Hon'ble Tribunal while allowing (vide order dated 23.4.2003 (Annexure-4) the OA passed the order to grant family pension treating her husband late Ram Pragas as a temporary railway employee as he was medically examined for the post of Gangman on 2.2.1984 and was also screened in 1995. It was admitted by the department that her husband was screened Gangman before his death. Against the above order of Hon'ble Tribunal, the respondents/Railway filed a Writ Petition No.34859 of 2003 in Hon'ble Allahabad High Court. This Writ Petition was dismissed in favour of the applicant No.I on 25.1.2005 (Annexure-A-5) and finally the applicant was granted family pension by the respondents treating her husband as a temporary railway servant as he was screened for the post of Gangman in 1995 well before his death on 2.3.1996 and had rendered about 18 years of service. Accordingly, respondents paid all the pensionary benefits also but the case of applicant No.II was not reviewed by the respondents as he had to join as casual labour in order to sustain the poor family of the deceased.

4. It is also submitted by the applicant that the case for compassionate appointment was arbitrarily considered and applicant No.II was given a post of casual labour/Gangman instead of being




considered for Group 'C' category post keeping in view of his educational qualifications in accordance with the Railway Board's instructions issued vide their circular No.E(NG) II/81/RSC/25 dated 6.5.1982 (Annexure-A-6). It appears that the whole Service Record of applicant No.I was not updated and he was not considered as regular employee while considering her son's case for compassionate appointment. After the final decision of the Hon'ble High Court in above mentioned Writ Petition the applicant No.I represented on 25.4.2005 (Annexure-A-7) to the Divisional Railway Manager, N.C. Railway, Allahabad endorsing copy to the General Manager, Allahabad requesting for the review of the case for compassionate appointment given to his son and to consider the same for suitable Group 'C' post because the offer of casual labour Group 'D' post was unjustified and contrary to the rules of Railway Board. When no decision was taken a reminder dated 5.6.2005 (Annexure-A-8) was sent by the applicant to consider the case for category 'C' post as per law laid down by the Hon'ble Supreme Court in the **State of Rajasthan Vs. Chandra Narain Verma and State of U.P. Vs. Paras Nath**, in which it was held that compassionate appointment should be made only in accordance with rules. It is further submitted in the OA that appointment on compassionate ground should be given on a regular basis and not in the capacity of casual labour as held in the case of Ram Chandra Vs. Executive Engineer (1999) by the Hon'ble Rajasthan High Court. In view of this case law the action of the respondents is not only arbitrary but also discriminatory and contrary to the law as it is against the provisions of Article 14, 16 and 21 of the Constitution of India. Keeping in view of his educational qualifications the applicant No.II who should have been




considered for the post of Group 'C' category only but he was given the post of casual labour i.e. Group 'D' post disregarding the rules as well as his educational qualifications. The applicant has declared that application is within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985. However, Misc. Delay Condonation Application No.5800/05 dated 18.12.2005 was also filed by Applicant No.II praying all the facts taking place in this case upto the decision of the Hon'ble High Court on 25.1.2005 decided in favour of applicant No.I for family pension. In the light of the facts and periodical happenings it is presumed in the OA that there is no delay in filing the same. However, in case the Hon'ble Tribunal considers that there is any delay in filing the present OA on the part of the applicant, the same may be condoned graciously. The OA was admitted on 5.11.2008, this application still remain undisposed of.

5. On notice, the counter reply has been filed on behalf of the respondents denying and controverting the averments of the applicant specially the claim of applicant No.II claiming the appointment for the category 'C' post. In the counter reply it is emphatically stated that the OA has been filed after a delay of 09 years. The applicant No.II was given the appointment on compassionate ground by the competent authority in terms of Railway Board letter dated 13.12.1986 and the applicant was offered appointment in Group 'D' post vide letter dated 13.6.1997. As per appointment in Group 'D' the applicant No.II joined without any protest. Now the applicant who had already accepted the appointment as casual Gangman in 1997 and joined the same has



again raked up his claim for category 'C' post. No explanation or reason has been given for this long delay, hence the application is highly time barred and the same is liable to be dismissed.

6. It is contended on behalf of the respondents that the applicant No.II had accepted the appointment offer in category 'D' as casual gangman and joined the same as far back as 1997 without any protest, he cannot legally challenge the same for Group 'C' post on the principle of estoppel and acquiescence. It is also added in the counter reply that the deceased father of applicant No.II while working as casual labour was not regularized in that post. Though the screening had taken place earlier, yet at the time of his death i.e. on 2.3.1996, he was a casual labour only with temporary status. Hence the contention of the applicant that his deceased father would be deemed to have been regularized is without any basis and not supported by any rules. In the railways earlier there was no provision for appointment on compassionate ground for wards of casual labourers who had attained temporary status and had died in harness. It was vide Railway Board's letter dated 4.5.1984 the circular was issued for considering the appointment on compassionate ground for the ward of casual labour or substitute who dies in accident while on duty. Later the matter was further considered in discussions with different federations and it was decided that the General Manager could exercise his personal discretionary power for giving appointment the eligible and suitable ward of such casual labour on compassionate ground who dies in harness. This decision was circulated for general implementation vide Railway Board letter No.E(NG/II/84/CI/28 dated 31.12.1986 (Annexure-CA-I). The case of the applicant No.II was considered



sympathetically by the competent authority in the light of Railway Board's Circular dated 31.12.1986 and he was appointed as casual gangman, which appointment the applicant No.II readily accepted without any protest. Once an appointment on compassionate ground has been made in particular category/grade no change of category/grade is subsequently permissible. It is also contended that in the Writ Petition No.34859 of 2003 before the Hon'ble High Court and before the Hon'ble Tribunal the issue for grant of family pension to the applicant No.I i.e. the widow of the deceased was decided in favour of applicant No.I in view of the 18 years of service and not because the deceased husband of the applicant was deemed to be a regular railway servant. This was a decision on the ground of equity and compassion. Neither the Hon'ble Tribunal in judgment dated 23.4.2003 nor the Hon'ble High Court in the order dated 25.1.2005 had held that the deceased husband of applicant No.I was confirmed or regular railway servant and thus the status of the deceased on the date of death remained as that of a temporary casual labour.

7. In reply to the contends of para 4 (7) of the application it is submitted by the respondents that the representation was considered by the competent authority and the decision was given to the applicant vide letter dated 1.8.2005 (Annexure-CA-2). As regard the contention of the applicant on the basis of circular dated 6.5.1982 is concerned it is applicable to wards² of permanent employee who dies in harness and not to the ward of casual labour who dies while in service. In such cases the circular dated 31.12.1986 is applicable. In the end, the respondents have



contended that there is no legal force in the O.A. and the claim of applicant No.II is not sustainable, hence the same should be dismissed.

8. Rejoinder affidavit and supplementary rejoinder affidavit are also filed on behalf of the applicant. The supplementary rejoinder affidavit is filed to reply to the various pleas/objections made by the respondents to oppose the Misc. delay condonation application. The O.A., C.A., R.A., and objections to the delay condonation application and supplementary rejoinder affidavit alongwith other documents have been perused in detail. Learned counsels for both the parties have also made their written submissions. In support of his OA, the learned counsel for the applicant, while repeating the facts of the OA, argues that father of applicant No.II late Shri Ram Pragas was appointed as a casual gangman prior to 1.8.1978, he was granted status of temporary railway employee after completion of 120 days of casual service as per rules. As per policy, the applicant should have been considered for Group 'C' post for which he was educationally qualified in view of the Railway Board's Circular dated 6.5.1982 (Annexure-A-6 of OA). Since family pension was not granted to applicant No.I she filed OA No.1537/99 in Hon'ble C.A.T. The OA was allowed in her favour on 23.4.2003 for grant of family pension (Annexure-A-4 of the OA). The respondents/Railway filed Civil Misc. Writ Petition No.34859 of 2003, which was dismissed and the order of Hon'ble C.A.T. was upheld by Hon'ble Allahabad High Court vide order dated 25.1.2005. Thereafter, the applicant No.I represented on 25.4.2005 to the D.R.M., Allahabad and also sent the reminder dated 5.6.2005 to review the appointment given on compassionate




ground for applicant No.II as his case was not considered as per rules contained in Railway Board's instructions dated 6.5.1982 due to wrongly shown status of the deceased railway employee. On the point of limitation, learned counsel for the applicant has placed reliance on the following judgments :-

(i) Eluri Marthamma Vs. Divisional Railway Manager, S.C. Railway and ors. (Passed by Andhra Pradesh High Court in W.P. No.2281 of 1999)

(ii) Padma Biswas Vs. Union of India and ors. - (1996) 32 Administrative Tribunal Cases 432.

(iii) Tapas Gosh Vs. Union of India and ors. - (1995) 29 ATC 474 (Calcutta).

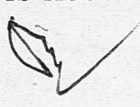
It has been strongly contended by the learned counsel for the applicant, that the appointment on compassionate ground in the case of applicant No.II should be reviewed because his earlier appointment in Group 'D' category was arbitrary and contrary to rules as his deceased father was treated as casual labour with temporary status and not as a screened and regular railway employee. Since the family was facing hardship he had to join in Group 'D' category at that point of time. But when the issue of the status of his deceased father was finally settled in the OA filed for family pension and consequent order of Hon'ble High Court dated 25.1.2005 the representation for appointment in Group 'C' category was moved in terms of Railway Board's circular dated 6.2.1982. In support of his claim for the appointment in Group 'C' category, the learned counsel for the applicant has relied on the following judgments and orders passed by the Hon'ble Apex Court, Hon'ble High Court and Hon'ble Tribunal :-



- (i) **State of Rajasthan Vs. Chandra Narain Verma (1994 (2) SCC 752)**
- (ii) **State of U.P. Vs. Paras Nath - 1998 (2) SCC 412**
- (iii) **Ram Chandra Vs. Executive Engineer - (1999) I ATJ 626 (By Rajasthan High Court).**
- (iv) **Ajay Kumar Sharma Vs. State of Govt. of U.P. and others - 2000 All C.J. page 550.**
- (v) **Smt. Bhagwani Devi & Anr. Vs. Union of India and ors. (OA No.1476 of 2004 ([passed by C.A.T.).**
- (vi) **Bhoj Raj Vs. Union of India and others (passed by CAT Jodhpur).**
- (vii) **Surya Kant Kadam Vs. State of Karnataka & ors. - 2002 (9) SCC 445.**

In his rejoinder affidavit, it is also stated that Railway Board's circular dated 13.12.1986 is applicable into the case of deceased casual labour for considering the appointment and not in cases of screened casual labour as it happened in the case of deceased late Ram pragas. In view of the ground and other points taken by the learned counsel for the applicant in his OA and written submissions and on the basis of the different cases as referred to above learned counsel has contended that the relief sought in the OA are worth consideration in his favour.

9. Learned counsel for the respondents has vehemently opposed the claim of the applicant for appointment to Group 'C' category on the basis of the case decided by the Hon'ble Apex Court in the **State of Rajasthan Vs. Umrao Singh - 1994 (28) ATC (SC) 513** in which it has been ruled that once a compassionate appointment was given and accepted the right to such appointment stands exhausted second consideration for a higher post is not warranted. He has also



filed the photocopy of this judgment alongwith his written submission. The relevant part of this judgment is quoted as under :-


“A. Appointment – Compassionate appointment – Exhaustion of the right to Once a compassionate appointment was given and accepted, the right to such appointment, held, stood exhausted – Second consideration for a higher post not warranted.”

10. Learned counsel for the respondents would further contend that there was no provision for compassionate appointment for wards of casual labour temporary staff. It was later considered by the Railway Board which issued the circular dated 31.12.1986 (Annexure-CA-I). Para 5 of this circular is relevant here in which it has been stated that General Manager of concerned Railway may consider extreme hardship on merit and grant eligible and suitable ward in the form of engagement as casual labour or substitute. Applicant No.II was considered in view of this provision and he was offered appointment in Group ‘D’ post vide letter dated 13.6.1997 on which he joined without any protest. The deceased Ram Pragas, father of applicant No.II, was not a permanent employee of the Railway as he was engaged as casual labour and subsequently temporary status was granted. The point of inordinate delay to file this OA has also been raised strongly by the learned counsel for the respondents. He states that applicant No.II accepted the appointment and joined in 1997 and after the expiry of about 09 years having accepted the said appointment has filed the OA in 2005 under the extant rules. The delay has not been properly explained.


11. I have perused the O.A., counter affidavit, rejoinder affidavit and written submissions alongwith other documents filed by learned



counsel of both the parties on behalf of their applicant and respondents. Since the case has already been admitted long back the point of limitation may not be very much pertinent and relevant at the time of the final disposal of the OA. So I consider that delay may be treated as condoned by implication. As far as merits of the case are concerned, I have given thoughtful consideration to various points and submissions put forth by both the learned counsels. The judgments/orders relied upon by both the parties are also taken into consideration and perused between the lines. It is factually admitted that applicant No.II was given the appointment in Group 'D' post as casual labour in 1997. He accepted that appointment and joined the same. At the time of joining or accepting he did not raise any objection and no protest was lodged before joining the same. So even if it is accepted that he should have been considered for Group 'C' post as per Railway Board's circular dated 6.5.1982 and not as per Railway Board's instructions dated 31.12.1986 as contended by the respondents, he should have either not accepted offer of appointment or should have lodged the protest or objection to the same before joining which the applicant No.II did not do. He is thus barred on the basis of principle of estoppel and acquiescence. The facts, circumstances and issues decided in various judgments referred to or relied upon by the applicants are different from the facts of the present case and hence not relevant to give any relief them. The judgment of Hon'ble Supreme Court relied upon by the learned counsel for the respondents is quite relevant in the present case. I have no hesitation in accepting the contention of the respondents. The applicants have not been able to substantiate their claims in the OA.



12. In view of the above observation, I find that the applicants have failed to prove their case for the relief they have sought. Hence the OA is dismissed. No order as to costs.


Member-A

RKM/