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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NO.306 OF 2005.

ALLAHABAD THIS THE 22nd DAY OF September 2006

HON'BLE MR. JUSTICE KHEM KARAN, V.C.

Smt. Panna Devi  
Widow of late Ram Sumer  
Aged about 47 years  
R/o Village Lalpur, P.O. Jalalpur  
District Jaunpur.

.....Applicant

(By Advocate: Sri Sudama Ram)

Versus.

1. Union of India through General Manager,  
Northern Railway, Baroda Bouse,  
New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow.
3. Sr. Divisional Personnel Officer, Northern Railway,  
D.R.M's Office, Lucknow.
4. Divl. Engineer (DEN), Northern Railway, Varanasi.

.....Respondents.

(By Advocate: Sri S.K. Rai)

ORDER

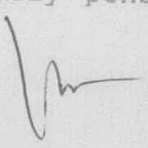
The applicant, widow of late Sri Ram Sumer has filed this O.A. under section 19 of Administrative Tribunal Act, for issuing a direction to the respondents to grant to her family pension and other pensionary benefits, on death of her husband in harness together with interest @ 12% per annum.

2. There appears to no dispute that late Sri Ram Sumer, entered in service on 24.3.1973 as Casual worker (Gangman) under I.O.W/ Northern Railway Varanasi, and after completing 120 days, attained temporary status in April 1994. Though declared medically <sup>unfit</sup> ~~fit~~ in 1982 for class B-1 category, <sup>but</sup> continued working as Temporary Khalasi, till his death on 16.3.1983. He received pay in the scale of 196-232. The applicant represented to the Railway Minister and other Authorities in February 2000, for ~~fit~~

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compassionate appointment of her son and for settlement of family pension etc. On getting no response, she filed O.A. NO.818/04 Smt. Panna Devi and others Vs. Union of India and others before the Tribunal at Allahabad which this Bench disposed of at the admission stage vide its order dated 6.8.2004 (A-10). It rejected the claim for compassionate appointment directing the respondents to dispose of the representation dated 7.6.04 of the applicant regarding grant of family pension. It appears that the respondent NO.2 rejected this representation vide his order dated 17.11.2004 (Annexure A-1) on the ground that her husband was not screened by the Screening Committee so he did not come within a definition of regular Railway Employee and so she was not entitled to the family pension. Relying on decision dated 23.4.2003 of this Tribunal in Mandodari Devi Vs. Union of India and others in O.A. NO.1537/99 decision dated 18.2.2005 of this Bench in O.A. NO.812/03 Smt. Baijnathi Devi Vs. Union of India and others, and decision dated 21.6.2002 of Ahmadabad Bench in such Vallam Badia Vs. Union of India and others in O.A. NO.316 of 1996, 2003 (2) (CAT) page 271, she has staked her claim for family pension on the ground that since her husband had also attained temporary status and had worked for 8 or 9 years after attaining this status so she is also entitled to family pension under the Relevant Rules.

3. In their reply though the respondents do not dispute the fact that the husband of the applicant started as a casual worker on 24.3.1973, attained temporary status in April 1974 and continued working till his death on 16.3.83, have resisted the claim for family pension, mainly on the grounds that firstly this O.A. is highly time barred and there is no request for condonation of delay and secondly in view of Hon'ble Supreme Court decision in Union of India and others Vs. Rabia Bikaner and others (1997) 6 SCC page 580 and also in Ram Kumar and others Vs. Union of India and others, 1997 (3) SCJ page 689 held, widow or other dependents of such a casual worker, is not entitled to family pension. The respondents have clearly stated in their reply that applicant's husband was never screened or regularized till his death in 1983 so family pension was not admissible to





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the dependents of such casual workers. According to them, the cases relied on by the applicant are distinguishable on facts and ~~were~~<sup>are</sup> not helpful to her. As regards the decision dated 8.2.02 of this Tribunal in Bhanumati's case, they tried to say in para 36 that in writ petition no. 199/03 filed by Union of India and others, the Hon'ble High Court was pleased to stay its operation vide its order dated 5.2.2003 (SCA-3) so the same could not be relied as a good precedent to support the claim.

4. In her rejoinder affidavit, the applicant has referred to some more judgments of various Bench of this Tribunal and also to certain decisions of Apex Court and also to relevant provisions of family pension scheme for Railway Servants so as to say that the scheme of family pension is quite different to the scheme of pension to the Railway Servant and in a case of family pension, it becomes admissible to the widow of the deceased railway servant, if he dies after completing one year's of service.

5. I have heard Sri Sudama Ram, appearing for the applicant and Sri S.K. Rai appearing for the respondents. Learned counsel for the applicant has also filed written arguments.

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, I would like to first dealt with the plea of limitation, raised by the respondents in their reply.

7. According to the respondents, this O.A. filed after about 20 years of the death of railway servant, for grant of family pension, is highly time barred and deserves to be dismissed on this ground alone. In para 11, reference has been made to *Shiv Kumar Dey Vs. Union of India* 1987 (3) ATC 427, *R.L. Buxy Vs. Ministry of Defence* 1987 (5) ATC page 521, *S.S. Rathore Vs. State*

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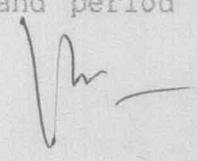
of U.P 1990 (SSC) (L&S) page 50, High Court of M.P Vs. Mahesh Prakash 1995 (SCC) L&S page 278, State of Punjab Vs. Gurudeo Singh AIR 1991 SC page 1219, Ratan Chand Samanta Vs. Union of India and others 1994 SCC (L&S) page 182 and Rhoop Singh Vs. Union of India 1992 (921) ATC 675. It is said that the question of limitation is an important one and petitions filed beyond the period of limitation, should not be entertained and the jurisdiction exercised, without condonation of delay. It is averred that there is no request for condonation of delay even if such request was there, it could not have been accepted in the facts and circumstances of the case as the delay was of more than 2 decades. On the other hand, relying on *S.K. Mastan Bee Vs. General Manager South Central Railway* 2003 SCC (L&S) page 93 and also on decision dated 18.2.2005 of this Bench in O.A. NO.812/03 Smt. Baijnathi Devi Vs. Union of India and others, Shri Sudama Ram has argued that non-payment of family pension, being a continuing cause of action, the question of limitation does not arise, moreso after decision dated 6.8.2004 in earlier O.A. No.818 of 2004.

8. There is no dispute on the point that the present applicant and her son Sri Shiv Pujan filed one O.A. No. 818/04 for grant of family pension and for compassionate appointment of Shiv Pujan. That O.A. was finally disposed of vide order dated 6.8.2004 (A-10). While the request of applicant for grant of compassionate appointment was rejected but the request for grant of family pension was not so rejected but it was said that it was premature in that respect as her representation dated 7.4.2004 for release of family pension was still pending and had not been rejected. The respondent <sup>were asked</sup> to verify from record and give suitable reply to the applicant within a period of 4 months from the date of communication of this order. In other words, her claim for family pension was kept alive. In compliance of those directions dated 6.8.2004, this impugned order dated 17.11.2004 (A-1) has been passed and aggrieved of it, the applicant come again to this Tribunal. I fail to understand as to how in the facts and circumstances of the case, the present O.A. for grant of family pension can be said to be barred by law of limitation. The



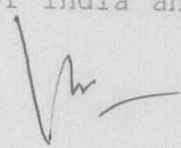
respondents did not challenge that order-dated 6.8.2004 but accepted the same. They cannot be permitted now to raise the plea of limitation. Secondly, there appears to be sufficient force in the submission of Sri Sudama Ram that non-payment of family pension is a continuing cause of action. This view finds support from decision dated 18.2.2005 of this Bench in **O.A. NO.812/03 Smt. Baijnathi Devi Vs. Union of India and others**, Hon'ble Member clearly said in para 4 of his order that non-payment of pension is a continuous cause of action and for saying so he relied on **Major Rajinder Singh Vs. Union of India and others 2003 (1)S.L.J page-1**. Again in **S.K. Mastan Bee Vs. General Manager, South Central Railway** and another reported in **ESC 2003 (1) page 17**, Hon'ble Apex Court has said that claim for family pension put forward by an illiterate and ignorant widow of the deceased railway servant, cannot be rejected on the ground of laches. So it appears to be a case where plea of limitation cannot be pressed into service because firstly the non-payment of family pension is a continuous cause of action as held by this Tribunal in the case mentioned above and secondly such plea was not successfully raised in the earlier O.A decided on 6.8.2004. In case respondents were of the view that earlier O.A. NO.81/04 for grant of family pension was barred by law of limitation, they ought to have challenged the same before the higher forum but they kept mum. So the respondents' plea that O.A. is barred by law of limitation or it deserves to be rejected on the ground of laches, is rejected.

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 very 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 regularized 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 a 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. NO.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. Railway 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 2006 (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 labour having attained temporary status was not regularized 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 regularized. 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 Indian 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 <sup>away</sup> 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

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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 <sup>proper</sup> on my part, to take view different to one taken in the cases referred to above.

12. In the instant case, the husband of the applicant worked for more than 9 years before his death. Out of this entire period, about 8 years was in the capacity of temporary status. It was not within his power to compel the respondents to regularize his services. It would be highly unjust if widow of such casual labourer who served the Department for about 10 years is denied family pension or other terminal benefits as may be admissible to regularly appointed temporary servants of the Railways. The practice of keeping such casual labourer in temporary status for a decade or two and thereafter to deny the family pension to his widow or minor children cannot be said to be healthy one. I am of the view that applicant is entitled to the family pension and also to other terminal benefits as may be admissible to the temporary railway servants under the relevant rules.

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 a 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.

No costs.

*[Signature]*  
22.9.08  
Vice-Chairman

Manish/-