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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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O.A.No. 564 of 1986

Kamla Devi and others Applicants.

Versus

Union of India and others Respondents.

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Hon'ble Mr. Justice K. Nath, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 seeks relief of Family Pension, Life Insurance amount and other benefits and also for compassionate appointment of applicant no.2, Triloki Nath, eldest son of the deceased Railway Employee, Ram Murat.

2. The applicant no.1, Smt. Kamla Devi is the widow of late Ram Murat and applicant no.2 is the son of late Ram Murat. Their case is that Ram Murat was appointed as 'Khalasi' in the scale of Rs.(186-320) under the IOW (Special) Northern Railway, Allahabad on 31.8.1981 and died on 12.12.1984 after having worked for three years, three months and twelve days. Relying upon the provisions of para 2311 (3) (b) of Chapter-22 of Indian Railway Establishment Manual read with para 801 of the Manual of Railway Pension Rules, 1950, it is claimed that the applicants are entitled to Family Pension. Similarly, relying upon the Railway Board's letter dated 29.7.1977 and 4.1.1979 (Annexures- 1 & 2), the applicants claimed Insurance Money concerning the employee.

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3. The respondents case in paragraph nos. 4,7,8 & 10 of the counter affidavit is that Ram Murat was employed as a 'Casual Labour' Khalasi under the IDW and was never regularised by means of screening or empanelment. It is pointed that in Rule 102(13) of the Railway Establishment Code, Vol.I, a casual labour is not a Railway Servant by definition. It is also pointed out that one year's continuous qualifying service for entitlement of pension in para 2311(3) (b) of the I.R.E.M. is also not applicable to the applicant because in view of para 2511 (c) of the service prior to absorption against regular, temporary or permanent post after requisite selection does not constitute qualifying service.

4. The learned counsel for the applicant says that there is no proof that Ram Murat was only a casual labour Khalasi. It is urged that he was given a medical identity card and also railway pass, which was not possible if he was not a regular employee. It is significant that applicants have not been able to produce any order of appointment. We do not think that mere issue of identity card for medical examination or railway Pass, would prove the status of a railway employee. The burden of proof was clearly upon the applicants which they have failed to discharge. It is not possible to hold, therefore, that Ram Murat was a regular Khalasi. He could not, therefore, earn pension and consequently, the applicants are not entitled to any family pension or insurance money.

5. So far as the applicants' claim for compassionate appointment in the railway is concerned, reliance is placed upon Railway Board's letter dt.30.4.1979 (Annexure 3)

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Para 1 of this letter deals with the employees who lose their life in the course of duty; that is not the applicants case. Para 2 deals with those employees who die in harness. It contemplates that in their case, the appointment on compassionate ground should be restricted to a son/daughter/widow of the employee and where the son or daughters are minors, the case may be kept pending till they attain the age of 18 years. It is also provided that such cases may be kept only for 5 years after which they would lapse. Para 4 sets out the order of priority in different classes of employees whose dependants may be given compassionate appointment.

6. Sri Amit Sthalkar appearing on behalf of the respondents refers to a decision in the case of Usha Devi Vs. General Manager, Southern Railways (1987) A.T.C. 512 to show that a casual labourer is not an employee and on his death, his dependants may not seek employment on compassionate ground under the circular dated 30.4.1979. We are not in a position to apply this decision because the respondents have not stated their case specifically on the point in their counter. There is a general denial of the relief sought by the applicants. We think that if the respondents had set out their case in this regard specifically, the applicants may have had some occasion of explaining the position and the matter could have been decided. We think that the interests of justice will be met if the respondents are required to consider the case and pass the appro-

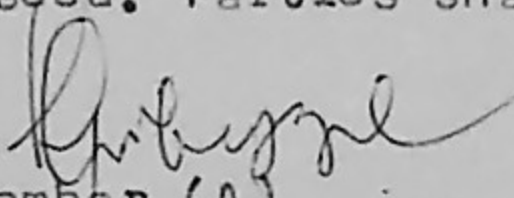


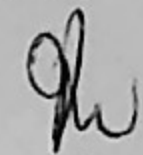
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private orders.

7. The application is partly allowed and the respondents are directed to consider the case of applicant no. 2 Triloki Nath for the compassionate appointment as dependant of Ram Murat in accordance with the applicable law within 4 months from the receipt of a copy of this judgment. In other respects, the application is dismissed. Parties shall bear their costs.


Member (A)


Vice-Chairman

Dated: 21.3.1991

Allahabad.

(n.u.)