

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1729 of 1994
this the 10th day of August' 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

Smt. Sona Devi, W/o late Sri Sunder Lal, Gangman, aged
about 38 years, Village Pure Konhu Ka Purwa, Post Katghar,
District Rai Bareilly.

Applicant.

By Advocate : Sri S.S. Sharma.

Versus.

1. Union of India owning and representing the Northern Railway notice to be served upon the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Administrative Officer (Construction), Northern Railway, Kashmere Gate, Delhi.
3. The Divisional Railway Manager, Northern Railway, Lucknow.
4. The Dy Chief Engineer/Construction, Northern Railway, Allahabad.

Respondents.

By Advocate : Sri P. Mathur.

O R D E R

The applicant-Smt. Sona Devi, who is widow of late Sri Sunder Lal, has approached this Tribunal for issuing directions to the respondents to grant the Family Pension w.e.f. 3.6.86 the date on which her husband died in harness. The applicant has further sought direction to the respondents to pay gratuity, Group Insurance, Arrears of pay, Deposit Link Insurance etc.. The applicant also seeks direction to the respondents to grant temporary

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status to her deceased husband w.e.f. 26.1.75 and to fix the pay accordingly and also to make arrangement for payment of arrears on this account to the applicant and other consequential benefits. The applicant has also prayed for issuing direction to the respondents to appoint her on suitable post on compassionate grounds.

2. The case of the applicant is that her husband late Sri Sunder Lal (deceased in short) was appointed as Gangman on daily wage basis in Civil Engineering Construction, Northern Railway, on 20.9.1974 under the respondent no.4. The deceased had worked in Construction Department from 20.9.74 to 3.8.86. The applicant claims that having worked continuously for more than 120 days, the deceased had acquired temporary status as Gangman on 26.1.1975 in the grade of Rs. 200-240/-. The respondents, however, granted to the deceased the benefit of temporary railway employee only from 1.1.1981 against the rules. The services of the deceased were granted regularised as temporary Gangman w.e.f. 1.1.1981 as per the order of Railway Board dated 1.6.1984 after observing all the formalities including the medical fitness. It is contended that after having performed the duty for two years satisfactorily, the deceased should have been treated confirmed on the post of Gangman w.e.f. 2.1.1983. However, due to irregular act of the respondents, the deceased could not be regularised and absorbed against any permanent post till his death i.e. 3.6.1986.

3. It is claimed that the Railway Board vide letter dated 6.12.1984 sanctioned 40% permanent construction reserved posts in each category to be operative from 1.4.1984 which was communicated by the General Manager

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(G.M. in short), Northern Railway vide letter dated 4.1.1985 to the construction authorities for further necessary action. Accordingly, the Chief Engineer Construction, Northern Railway, New Delhi with the concurrence of the finance accorded sanction to the conversion of posts against each category as permanent as a part of construction reserved in Class IV category to be operative from 1.4.1984 vide his letter dated 17.2.1986. As a result of about 240 posts of Gangmen were sanctioned. The D.R.M., N.R., Lucknow in response to the order passed by the apex court in the case of Indra Pal Yadav prepared a combined seniority list of Project Casual Labourers for regularisation and absorption and also circulated the same vide letter dated 12.1.1988 in which the name of the deceased was mentioned at sl. no. 25 of combined seniority list. Thus, the deceased was one of the senior most eligible Gangman to be regularised against 40% construction reserved permanent sanctioned posts to be operative w.e.f. 1.4.1984. But the Construction authorities took abnormal time in sanction of the posts, screening and finalisation of the panel, which was finalised only on 27.9.1991. On account of this delay of more than seven years, the deceased was deprived for regularisation of his services as permanent Gangman w.e.f. 1.4.1984 and more than 700 juniors to the deceased were regularised w.e.f. 1.4.1984. The deceased while working as temporary Gangman died on 3.8.1986 without regularisation of his services for no fault on his part. The applicant immediately submitted an application to the respondents for appointment on compassionate grounds and for payment of settlement dues, which were duly forwarded to the G.M., N.R., New Delhi, but without any result.

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It is thus, claimed by the applicant that

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the deceased should be deemed to have been regularised w.e.f. 1.4.1984 as permanent Gangman and the deceased entitled to post-humous regularisation. The applicant is also entitled for appointment on compassionate grounds and other dues.

5. The claim of the applicant has been resisted by the respondents by stating that the deceased was merely holding temporary status at the time of his death in the year 1986 and as per Railway Board's instructions casual labourers who acquire temporary status will not, however, be brought on to the permanent railway establishment or termed as regular employee of the railways until and unless they are selected through Selection Board for Group 'D' posts in the manner laid down from time to time. It is further stated that the claim of the applicant for compassionate appointment had already been considered and rejected by the competent authority vide letter dated 3.8.89, which was duly communicated to the applicant. The applicant has filed the present O.A. in the year 1994, as such the same is highly barred by time and no cogent reason has been mentioned for such delay. It is also stated that the railway administration had already paid the legitimate settlement dues admissible to the applicant immediately on the death of her husband.

6. I have heard the learned counsel for the parties and perused the pleadings on record.

7. It is an admitted position that the deceased was granted temporary status as Gangman w.e.f. 1.1.1981. The claim of the applicant that the deceased was entitled for grant of temporary status w.e.f. 26.1.1975 after having continuously worked for more than 120 days since 20.9.74

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cannot be agitated so belatedly in the present proceedings. It is not in dispute that when the temporary status was granted to the deceased in the year 1984, he was alive and since he did not challenge the said order at that time, there is no justification to raise such question at this belated stage.

8. It is also worth mentioning that the claim of the applicant for appointment on compassionate grounds was considered and rejected by the respondents vide order dated 3.8.1989, a copy of which is available as Annexure CA-1 to the Counter. The applicant has not, doubt, denied this assertion of the respondents. But I am not inclined to dismiss the case of the applicant on the ground of its being barred by time because a pertinent legal question has been raised by the learned counsel for the applicant. It is contended by the learned counsel for the applicant, on the basis of several decisions of various Benches of this Tribunal and some judgments of the Apex Court, that under the facts and circumstances of the present case, the deceased should be deemed to have been regularised against a permanent post w.e.f. 1.1.1984. Hence, the applicant is entitled for family pension and other benefits. It is also claimed that the deceased having acquired temporary status as Gangman at the time of his death, his widow is still entitled to the family pension. In support of his contention, the learned counsel for the applicant has placed reliance on the following case law :

- (i) Jaycub Santra Vs. UOI & Others
ATR 1988(2) CAT 483.
- (ii) Maltikar (Smt.) Vs. UOI & Ors.
(1992) 24 ATC 583.
- (iii) Bhagabanti Nayak (Smt.) Vs. UOI & Ors.
(1993) 25 ATC 139.
- (iv) Jamini Bala Bira Vs. UOI & Ors.
(1993) 25 ATC 254.
- (v) K. Pittammal Vs. U.O.I. & Ors.
(1994) 26 ATC 290.

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- (vi) Smt. Indu & Ors. Vs. UOI & Ors.
(1996) 1 ATJ 37.
- (vii) Prabhawati Devi Vs. UOI & Ors.
(1996) 32 ATC 515 (SC)
- (viii) Baniben Bav (Smt.) Vs. UOI & Ors.
(1996) 34 ATC 563.
- (ix) Threslakutty & Ors Vs. UOI & Ors.
(1996) 34 ATC 584.

by the various Benches of the Tribunal

9. In these cases, it was held^{but} that where a casual labour was granted temporary status^{for} one or the other reason his services were not regularised, widow of such employee was entitled to family pension under the provisions of para 2311 of I.R.E.M. and such employee would be deemed to have been regularised. It has been contended by the learned counsel for the applicant that in the case in hand also the deceased was not at fault and some juniors persons to the deceased were regularised in the year 1991 w.e.f. 1.1.1984. Hence, the deceased should also be treated having been regularised w.e.f. 1.1.1984 and consequently the applicant should be granted the benefit of family pension etc. including appointment on compassionate grounds. The learned counsel for the respondents has, on the other hand, relied-upon the decision of the apex court in the case of Union of India & Others Vs. Rabia Bikaner & Others (1997 SCC (L&S) 1524) in which the view taken by the Tribunal has been rejected. In this case, the apex court framed a question " Whether the widow of a casual labourer in Railway Establishment, who died after putting in six months' service and obtaining the status of a temporary workman, but before his appointment to a temporary post after screening, is entitled to family pension ? The apex court after considering its earlier decisions namely Prabhawati Devi Vs. Union of India & Ors. (1996) 7 SCC (L&S) 369, Union of India Vs. Sukanti SLP (c) No. 3341 of 1993 decided on 30.7.1996, has held

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that widow of such casual labourers are not entitled the family pension benefit. It was observed that it is true that under para 2511 of the Railway Establishment Manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants but this does not entitle them to family pension. Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merit as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of one year in the temporary post. If any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension. In all these cases, though some of the deceased employees had been screened, yet appointments were not given to them since temporary posts were not available or in some cases they were not even eligible for screening because the posts became available after the death. Under these circumstances, the respondent-widows are not eligible for family pension benefits. Similarly, in the case of Ram Kumar & Others Vs. Union of India & Others (1988 SCC (L&S) 329), the apex court had clearly held that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status, under the provisions of para 2511 of I.R.E.M.

10. It has been next contended by the learned counsel for the applicant that the status of the deceased was that of temporary railway servant. This argument is

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self-contradictory. The applicant has on the one hand claimed the benefit of deemed regularisation of the deceased against a regular post, on the other hand it is contended that the status of the deceased after having acquired temporary status, he was a temporary railway servant. In my considered opinion, an employee who has acquired temporary status is a distinct class then that of a temporary railway servant. A temporary railway servant is a regular employee, who is posted against a regular vacancy, whereas temporary status is granted to a casual labourer after completing certain working-days as casual labour. The apex court in the case of Rabia Bikaner & Others (supra) has observed that a casual labour who has got temporary status is required to be empanelled. After empanelment, he is required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, he should be appointed in order of merit after screening. In the present case, admittedly, the deceased was not screened for appointment in the temporary post in the regular establishment. In such a situation, the deceased cannot be said to be holding the post of temporary railway employee as contended by the learned counsel for the applicant.

11. Lastly, it is contended by the learned counsel for the applicant that the decision relied-upon by the respondents namely "Union of India & Others Vs. Rabia Bikaner & Others (supra) should be ignored ^{treating} its decision per incuriam. It is contended that the apex court had not considered the decision of the earlier Larger Bench (1996)(1) SLJ (SC) 116 in re. Ram Kumar & Others Vs. Union of India & Others. I find from the perusal of Ram Kumar's decision relied-upon by the applicant that the apex court has observed in that case that temporary employees of the

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railways are entitled for pension at the time of superannuation as recommended by the 4th Pay Commission and, therefore, the Railway Board was directed to consider the claim of the temporary employees for pension at the time of their superannuation. This decision does not lay down that the persons who have merely attained temporary status, are entitled for family pension. Thus, on the basis of the decision in this case the principle laid down by the apex court in Rabia Bikaner's case cannot be treated per incuriam.

12. As regards post-humous/deemed regularisation of the deceased ~~deceased~~, the process for screening of casual labourer forming the construction reserved in class IV was initiated by the railway administration in the year 1988 vide letter dated 8.8.1988 issued from the Headquarters of Northern Railway (Annexure-4). By that time, the deceased was no more. As observed in Rabia Bikaner's case (supra) a casual labour after attaining temporary status is required to be screened by the competent authority and as and when the vacancy for temporary posts in the regular establishment are available, they are appointed in order of merit after screening. In other words, at the time of screening the applicant was not physically available for screening test. As a matter of fact the apex court in Rabia Bikaner's case has rejected the concept of post-humous/deemed regularisation. In that case some of the casual labourers had even been screened, but could not be appointed to a temporary post because the posts became available only after the death of such screened casual labourers. Therefore, the question of post-humous/deemed regularisation of the deceased does not arise.

13. For the reasons stated above, I do not find that the applicant is entitled for family pension or any other retiral benefits. Consequently, the O.A. is dismissed. No costs.

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Rajiv Mehta
Member (J)