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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1891 of 1994

Allahabad this the 28th day of March 2000

Hon'ble Mr.S.K.I. Naqvi, Member(J)

1. Smt.Nanhaki, W/o Late Shri Radhey Shyam.
2. Ram Sewak, S/o Late Shri Radhey Shyam, both resident of Village ; Phulwaria, Post Office Jigna, District Mirzapur.

Applicants

By Advocate Shri Anand Kumar

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Shri Prashant Mathur

O R D E R

BY Hon'ble Mr.S.K.I. Naqvi, Member (J)

Smt.Nanhaki-widow of Late Radhey Shyam and her son-Ram Sewak, have knocked the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 with the prayer that Smt.Nanhaki be provided with family pension and Shri Ram Sewak- son

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of the deceased be provided with job on compassionate ground.

2. As per facts of the case-Shri Radhey Shyam was appointed on 14.9.1978 in the Railway service as Casual Gangman and after putting in requisite number of working days, he attained the temporary status. It was in the year 1991 that screening was held to regularise his services but its result was declared on 26.8.1992, empanelling him at serial number 105, when Shri Radhey Shyam had already died on 30/5/92. It has also been mentioned that Shri Radhey Shyam was declared unfit for *to the post of Gangman but has been declared for further* sedentary job ~~not~~ requiring exertion and, therefore, he was posted as Chowkidar. It was on 25.5.1992 that Shri Radhey Shyam was invalidated out of railway service and he died on 30.5.1992. It has also been mentioned that Shri Radhey Shyam was retrospectively discharged from employment with effect from 25.5.1992 vide order dated 02.6.1992.

3. The applicant applied for compassionate appointment of Ram Sewak-applicant no.2 but the same has been declined vide order dated 10.9.1993 on the ground that Shri Radhey Shyam was discharged from service on 25.5.1992 and died on 30.5.1992, therefore, he does not come under the category of employee died in harness. This order has been impugned in this O.A. and copy of the same has been annexed as annexure A-1. The applicants have sought relief mainly on the ground that the order dated 02.6.92

discharging the deceased is not maintainable under law as it gives effect in retrospect from 25.5.1992 and has been passed only to deny the benefits to the applicant. The applicants have also asserted their claim on the ground that screening of deceased-Radhey shyam was held in the year 1991. The result of which was declared on 26.8.92 in which he was empanelled at serial number 105 and thereby declared successful in the screening test hence he shall be deemed to be a regularised employee when he was discharged on the ground of being medically unfit and when he died subsequently on 30.5.1992.

4. The respondents have contested the case and filed the counter-reply in which it has been pleaded that the benefit of compassionate appointment and family pension cannot be ~~accorded~~^{extended} to the wards of casual labour with temporary status, declared medically unfit and in the present case since Late - Radhey Shyam was casual labour with temporary status at the time when he was declared medically unfit for all categories and at the time of death he was out of service. Referring the railway circulars of different dates, it has been pleaded on behalf of the respondents that the benefit of compassionate appointment is not available to a casual labour even after his having attained the temporary status and likewise the benefit of family pension cannot be extended to his ~~brother~~ family.

5. The applicants have filed their

rejoinder and reiterated the pleading of Original Application.

6. Heard, the learned counsel for the rival contesting parties and perused the record.

7. In this matter, Late Radhey Shyam was declared invalidated out of railway service vide medical report dated 25.5.1992 and consequent upon this medical report, the order was passed on 02.6.92 to discharge him from service w.e.f. 25.5.1992. The service record of the deceased was made available at the time of arguments which contains the medical certificate of the deceased as well. The perusal of this medical certificate shows that it does not bear the L.T.I. (Left Thumb Impression) of the applicant, which is a requirement for complete medical report. There is also mention in this medical report that "Radhey Shyam, Gangman, P.W.I., M2P, whose signature is given above and who was sick and under treatment from (date) 05.10.91 to (date) 20.5.92 is now fit to attend his duties (emphasis provided). After the above report, there is remark in red ink mentioning^{re} that "Radhey Shyam, Gangman/Eng/M2P may be invalidated out of Rly. Service vide C.M.S. A/d. letter no. 54 Med/1/M.B. Dated 20.5.1992. After this remark, there is signature of Medical Officer, which is dated 25.5.1992. This endorsement goes to ~~mention~~^{show} some reference of letter dated 20.5.92 through which Radhey Shyam was invalidated and not the finding of this Medical Officer, which provides some strength to assume that this Medical Officer himself found Radhey Shyam fit to attend his duties as per his report mentioned

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above within inverted commas and remark regarding Radhey Shyam's being invalidated comes through some other source. The narration of these facts leads that all is not well there but something fishy smears, though it cannot be said conclusively. This fact coupled with another attaining fact that the order to discharge Late Radhey Shyam was passed only after his death atleast ~~seven~~ ^{must} gives rise to a ~~case~~ ^{circumstance} where the claim of the legal heirs, who were the dependants of the deceased, deserve a sympathetic consideration.

8. It is also relevant to be considered that screening for regularisation of deceased Radhey Shyam was held in the year 1991 and its result was declared on 26.8.1992, though Late Radhey Shyam could not himself see his name at serial no.105 among successful candidates but the position remains that in the year 1991, he was found a fit candidate to be regularised. Though orders were passed subsequently but spade work had already been done.

9. The facts and circumstances of the present case are very much alike the case of 'Prabhawati', which was decided as "Prabhawati Devi Vs. Union of India and Others (1996) 32 ATC 515", in which their Lordships at Apex Court of India held as under;

"On the acquisition of temporary status, derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in

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this connection for support L. Robert D'Souza Vs. Executive Engineer, S. Rly and Union of India V. Basant Lal. We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal; overlooking as it does the chain in consequence, making the deceased acquire a temporary status and on his widow and children acquiring the right to claim family pension."

~~According to which~~^R the family pension was ordered to be provided to widow and children of deceased casual labour with temporary status.

10. So far as the position of compassionate appointment to son of deceased employee-the applicant Ram Sewak is concerned, the instruction of Railway Board contained in Circular letter dated 30.4.79 are very clear which provides "that" the appointments on compassionate ground may also be offered in the cases where the employees while in service become crippled, develop serious ailments like heart diseases, cancer, etc. or otherwise become medically decategorised for the job they are holding if no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment, if such an employee opts to retire." In the present matter, deceased Radhey Shyam was declared medically invalidated, no alternative job was provided to him, which could not be, because of his being invalidated and, therefore, compassionate appointment to his son may also be considered sympathetically for which there is provision in Railway Board's circular dated 24.6.82.

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11. With the above facts, circumstances and the law as well as the rules in view, I find it a fit case to direct the respondents to re-open the matter, consider the case of applicant no.1 for providing her family pension and for applicant no.2, to provide him a job on compassionate ground and thereby the respondents are directed to pass detailed, reasoned and speaking order in the light of the above observation within 3 months from the date of communication of this order with a copy to the applicants. No order as to costs.

12. The Service Book of deceased Radhey Shyam be returned to learned counsel for the respondents.

Sarvagur
Member (Judicial)

M.M. /