

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 23rd day of April 2003.

QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

O. A. No. 1537 of 1999

Smt. Mandodari Devi W/O Late Sri Ram Pragash R/O Village
Rudai Ka Pura, Post Bihasara, District Mirzapur.

..... Applicant.

Counsel for applicant : Sri Anand Kumar.

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, D.R.M.
Office, Allahabad..... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant has prayed for a direction to the respondents to grant family pension to the applicant with all consequential benefits.

2. The facts of the case are that the husband of the applicant Late Ram Pragash was initially engaged as Casual Labour prior to 1.8.1978 in Northern Railway. After continuous working of more than 120 days he attained temporary status. On 2.2.1984 he was medically examined and was found fit for B-1 medical category for regular absorption against group 'D' post. He was medically declared fit ^{for} the post of Gangman. In 1995 screening took place for his regularisation along with several others but before the panel of selected candidates could be declared, husband of applicant died on 2.3.1996 in Railway Hospital. These facts have not been disputed by the respondents in counter reply. The

applicant has prayed that husband of the applicant was drawing regular pay scale for about more than ten years as temporary employee and he was screened also for regularisation and under these facts applicant is entitled for family pension. Counsel for applicant has placed reliance on the judgment of this Tribunal dated 27.3.2003 passed in O.A. No.874/00 by which in similar facts and circumstances, the applicant in that case was found entitled for family pension under the Family Pension Scheme of Railway Board 1964. Sri A.V. Srivastava, learned counsel for respondents, however, submitted that the husband of the applicant could not be treated as Railway servant as he continued to be a Casual Labour, who are especially excluded in the definition of Railway Servant provided under Clause 23 of Rule 3 of Railway Service (Pension) Rule 1993. Learned counsel has also placed reliance on Rule 75 of Railway Service (Pension) Rule 1993 particularly explanation 2^{to} ^{Rule} Sub Rule 2 of 75 which says that the person who continues one year of service wherever it occurs in the rule shall be constituted to include less than one year of continuous service as defined in Clause 'B'. Sub Rule 2 of Rule 75 of Pension Rule 1993 reads as under :-

- "(2) Without prejudice to the provisions contained in sub-rule(3), where a railway servant dies—
(a) after completion of one year of continuous service; or
(b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service;
(c) after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V other than the pension referred to in Rule 53."

3. From clause 'B' it is clear that the family pension could also be granted to those who were examined by appropriate

medical authority and were declared fit by that railway authority for the service. In the present case the applicant has specifically claimed that her husband was medically examined on 2.2.1984 and ^{was} declared fit for the post of Gangman and pay of group 'D' was granted. The submission of learned counsel for the applicant that casual labour with temporary status could not be taken as railway servant does not appear to be correct in view of the provisions contained in para 2005 of Railway Establishment Manual Vol.II which says that casual labour treated as temporary are entitled to the rights of temporary railway servant. The Family Pension Scheme of 1964 is a special provision ~~to help~~ ^{for} those who are left without the bread earner by sudden demise, particularly a female member of a family. The benefits which are granted to the casual labour with temporary status, ~~which~~ have been increased ~~over~~ in phases clearly indicate that for all purposes they are railway servants. It cannot be denied that it takes long time in granting ~~them~~ ^{such} regularisation ~~as regular~~ employees. In the present case also husband of the applicant had served for more than 18 years. Such long service cannot be ignored for the purpose of family pension and particularly ^{in view of provision} the period of service rendered after attaining temporary status, is calculated for pension purposes. The learned counsel for respondents also relied on the judgment of Hon'ble Supreme Court in case of Union of India Vs. Rabia Bikaner & others 1997 SCC (L&S) 1524. This case has been considered by this Tribunal in earlier order relied on by the learned counsel for applicant and has been distinguished on facts. The judgment of Hon'ble Supreme Court in case of Prabhawati Devi Vs. Union of India & others (1996) 32 ATC 515 (SC) has been relied on which is squarely applicable in the present case.

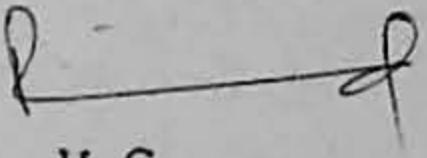
4. ^{as stated above and} For the reasons recorded in the judgment dated 27.3.2003, the applicant is entitled for relief. ^{For the}



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"Accordingly" ~~reasons stated above~~ this O.A. is allowed. The respondents are directed to grant family pension to the applicant with effect from the date of death of her husband. The respondents shall start payment of pension within four months from the date a copy of the order is filed and the arrears ^{shall be paid} within a period of six months from the date a copy of this order is filed.

No order as to costs.



V. C.

Asthana/