

8

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 1299/2000

THIS THE 18th DAY OF December 2002

HON. MRS. MEERA CHHIBBER, MEMBER-J

Smt. Gyan Devi ,
widow of Late Ram Nath,
Village: Basenpur,
Post: Shuklapur,
Dist:- Allahabad.Applicant.

(By Advocate:- Shri S.S.Sharma)

Versus

1. The Union of India owning and representing 'Northern Railway', notice to be served to - The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Allahabad.Respondents.

(By Advocate:-Shri A.K.Gaur)

O R D E R

HON. MRS. MEERA CHHIBBER, J.M

By this O.A, the applicant has sought following reliefs:-

- (a) That the Tribunal may graciously be pleased to direct the respondents to appoint/treat the applicant as regular Group 'D' employee w.e.f. 17-6-1996, the date on which she has been appointed as casual on compassionate ground.
 - (b) That the Tribunal may graciously be pleased to direct the respondents to grant family pension to the applicant w.e.f. 7-6-1992, the date on which her husband late Ram Nath, Gangman was killed on duty.
 - (c) That the Tribunal may graciously be pleased to direct the respondents for payment of gratuity, Group Insurance, Deposit Link Insurance etc. to the applicant by treating her husband/deceased employee as a regular and permanent Group 'D' employee.
 - (d) That the Tribunal may graciously be pleased to direct the respondents to make payment of aforesaid amount with arrear with 18% interest per annum compounded annually from the date amount is due to the applicant till the payment is actually made to the applicant.
- 8

- (e) That the Tribunal may graciously be pleased to award cost of the legal proceedings to the applicant. "

2. The facts as alleged by applicant are that her husband Late Ramnath was killed on duty on 7-6-92 pursuant to which the applicant was given compassionate appointment as Casual gangman vide letter dated 17-6-1999 but she was not given any family pension, DCRG, leave encashment or Insurance and deposit link Insurance etc. even though her husband had been appointed as a Casual gangman on 9-7-1985 and he ^{had} worked to the entire satisfaction of his superiors. It is submitted by applicant that large number of regular vacancies in Grade 'D' in Permanent Way unit of Engineering Branch of Allahabad Division were vacant since 1988-89 and Casual/Temporary status employees working in Permanent Way unit were to be regularised after screening. As ^{per R} para 2001 the applicant's husband was regularised as temporary on the post of gangman w.e.f. 10.11.1985 therefore it is submitted he became entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the manual.

3. The applicant has submitted the respondents unnecessarily delayed the process and ultimately conducted screening in April to July, 1992. The result of screening was issued on 20-9-1992 wherein applicant's husband Late Shri Ramnath was declared successful and employed by putting his name at Sl No. 896 (Annexure A-I) but unfortunately before the result was declared, he was killed leaving behind two daughters 13 and 7 years and two sons of 5 and 3 years who were totally dependant on him. The grievance of the applicant is that she was given only some amount of gratuity and insurance but not the other benefits

R

viz. family pension as they treated the husband as only temporary status. It is submitted by the applicant's counsel that as per rule 18(3) of Railway Services (pension) Rules 1993 a temporary Railway Servant is eligible for grant of ~~superannuation~~, retirements gratuity and family pension at same scale as admissible to permanent Railway Servants. ^{on superannuation B} Similarly in case of death the family becomes entitled to family pension and death gratuity. The applicant is stated to have given representation vide letter dated 28-9-1999 but no action was taken thus she was forced to file this case.

4. The applicant's counsel relied on 1996(11 AISLJ) 116 Ram Kumar II decided by Hon'ble S.C and 2001(21 AISLJ) CAT Mumbai 201. As far as Rabia's Judgment given by Hon'ble S.C and ^{reported in 1999(11 SLJ S.C 108.} is concerned, the counsel submitted ^{is B} its per incurium as Ram Kumar II was not considered and /or brought to the notice of Hon'ble Supreme Court.

5. The respondents have opposed the claim of applicant. ~~They~~ have submitted applicant was appointed on compassionate grounds vide order dated 17-6-1996 as per Railway Board's Circular dated 31-12-1986, 6-12-1989 and 6-12-1990. They have further submitted that after putting in 120 days one gets temporary status only and doesn't become a regular employee and persons with temporary status are not entitled to get pensionary benefits unless they are regularised. They have referred to Rule 3(23) and 31 as well as P.S No. 9526 to show that Railway servant means a person who is a member of Railway or holds a post under the Administrative Control of Railway Board but doesn't include Casual labour (Annexure 4&5). They have also relied on judgments given by Hon'ble Supreme Court reported in 1988 SCC (L&S) 329 Ram Kumar & others

B

Vs. U.O.I. & others and 1997 (L&S) 1524 U.O.I. & others Vs Rabia Bikaner and others. They have thus submitted that since the point is finally decided by Hon'ble Supreme Court in Rabia's case and and it is held widow of Casual employee with temporary status who has not yet been appointed to a temporary post in Railways is not entitled to family pension, the D.A is liable to be dismissed being covered by Supreme Court's Judgment.

6. I have heard both the counsel and seen the Judgments also relied on by both the sides. The applicant's counsel had relied heavily on Ram Kumar IInd reported in 1996 (11 AISLJ) 116 but a perusal of same shows that the Hon'ble Supreme Court had only given directions to the respondents to consider the claim of temporary employees who were before the Court for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently therefore, firstly this was a Judgment in personum as it was with regard to only those persons who were before them. Moreover no law was laid down in this case. In fact the opening sentence on page 117 reads as under:-

" It appears that the Board on the basis of the fourth pay commission report has provided for pension at the time of superannuation even to those who are temporary employees"

Now if we analyse it, the question of superannuation would arise only if the person is regularised or is appointed against a regular vacancy and holds a lien on the post whereas a casual labourer with temporary status though gets certain rights and privileges as mentioned under the manual but he cannot be said to have been appointed against a regular existing vacancy or a post. He doesn't hold any lien on the post as temporary status is granted irrespective of the availability of vacancies. Perusal of this Judgment

8

also shows that this was a case where the dispute was with regard to those skilled Casual workers who though were working in class III posts for the last more than 5 years but were regularised in Class IV so it is clear that those persons were also regularised atleast in Class IV posts whereas in the instant case applicant had not yet been regularised and was only screened but he died even before the declaration of the result therefore in my considered view Ram Kumar IInd case is of no assistance to the applicant at all.

7. Coming to the facts as narrated in Rabia Bikaner it is seen this was a case where exactly same issue as raised in present case was before the Hon'ble Supreme Court viz whether the widow of a Casual Labourer in the 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 under the 1964 family pension scheme.

8. The Hon'ble Supreme Court after referring to Railway Board's letter held that the family pension scheme 1964 for railway employees is applicable in the case of regular employees on pensionable establishment and since casual labourers will be brought on to the pensionable establishment only on their absorption against regular temporary posts, it follows that they will come under the purview of the scheme from the date of their absorption against regular temporary posts. In other words the benefit of family pension scheme 1964 for railway employees

//6//

will be admissible in the case of death of such an employee while in service only if he had completed a minimum period of 1 years continuous service from the date he was absorbed against a regular temporary post.

9. It is seen that respondents in that case had also relied on para 2511 but Hon'ble Supreme Court observed as under:-

"We find it difficult to give acceptance to the contention. It is seen that every Casual Labourers employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, 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 to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits.

10. They also distinguished the case of Prabhawati Devi reported in 1996 (7) SCC 27.

11. Thus it is seen that the present case is squarely covered ^{Case R} by Rabia Bikaner's which is a detailed judgment dealing with rule position so I am bound by that. Reliance placed by applicant's counsel on the judgment passed by Tribunal contrary to Supreme Court's Judgment definitely is of no consequence. Moreover, the facts of this ^{Case R} are not identical. In the

R

1/7/11

case decided by Tribunal applicant's husband had put in 21 years of service whereas in the instant case applicants husband had hardly put in 7 years as casual worker. However, once the matter is decided by Hon'ble Supreme Court there is nothing more which requires to be adjudicated upon. Accordingly the O.A. is dismissed with no order as to costs.



MEMBER (J)

madhu/-