

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 13th day of March, 2001

Original Application No. 1045 of 2000

CORAM:-

Hon'ble Mr. SKI Naqvi, J.M.

Nathoo Devi Widow of Late Shri Bhagwan Das,
Resident of Mohalla-Khirkaija Fatehpur Sikri,
District-Agra C/o Shri Dharam Narain Gupta,
R/o 313-E, Old Idgah Colony, Agra.
(Sri Rakesh Verma, Advocate)

..... .Applicant

Versus

1. Union of India through the
Chairman, Railway Board,
Rail Bhawan, New Delhi.

2. The General Manager (Estt.),
Western Railway, Chhatrapati
Shivaji Terminus, Mumbai.

3. The Divisional Railway Manager,
Kota Division, Kota.
(Sri GP Agrawal, Advocate)

..... .Respondents

O R D E R (Or-ai)

By Hon'ble Mr. SKI Naqvi, J.M.

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Briefly stated the facts of the case are that Late Shri Bhagwan Das was engaged as casual labour in respondents establishment on 20-8-1978. He was given temporary status w.e.f. 21-10-1982. His case was also taken up for screening and for that purpose he was medically examined but

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before a decision could be taken to regularise his services, he died on 10-6-1991 leaving behind the applicant Smt. Nathu Devi as his widow, who presented her claim for family pension but the same has been declined vide order dated 4-7-1996, a copy of which has been annexed as Annexure-A-1 to the OA. The ground mentioned in this impugned order is that since the deceased husband of the applicant died while he was holding a temporary post and was not regularised, therefore as per Railway Board directions she is not entitled to any family pension.

2. The respondents have contested the case and emphasised that the impugned order has rightly been passed and the applicant is not entitled to any family pension.

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

4. Here the short question involved is whether the widow of a casual labour who had attained the temporary status but his services not regularised, is entitled to family pension or not?

5. Learned counsel for the applicant has referred to 1996 SCC(L&S) 369 (Prabhawati Vs. UOI & Ors) 4999(3) A.T.J. 155 (Smt. Kamini Srivastava Vs. UOI & Ors) decided on 4-6-1999 by the Lucknow Bench of this Tribunal in OA No.524/1997. He also referred two cases of Jaipur Bench and a case from Calcutta Bench. The first Jaipur Bench case is OA No.290/1992 decided on 14-9-1994 (Smt. Nehni Bai Vs. UOI & Ors, a copy of the order has been annexed as Annexure-A-5. The other Jaipur case is of Kanta Bai in OA No.126/1994 decided on 12-1-1995, a copy of which has been annexed as AnnexureA-6. The Calcutta Bench case is reported 11 (1993) C.S.J.(CAT) 154

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(Jamini Bala Bera Vs. UOI & Ors.). The applicant has also annexed as An exure-A-8 the decision of Allahabad Bench in OA No.1304/1996 decided on 27-4-2000. Learned counsel for respondents has rested his arguments on ratio in 1997 SCC (L&S) 1524 (Union of India Vs. Rabia Bikaner & Ors decided on 7-7-1997.

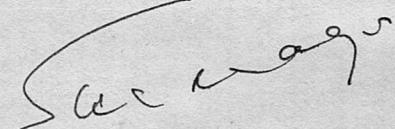
6. I have gone through the facts and the decision taken in the above referred cas laws. In all the cases referred above on behalf of the applicant, it is found that in all those matters the services of the deceased employees were screened before death. But in the present case, though it is very unfortunate, the husband of the applicant died when his services were in the process of screening and he was already medically examined and thereby only a formal order was yet to be passed when the applicant's husband passed away and, therefore, in the present circumstances the most applicable legal position is the ratio laid down in para 5 of Rabia Bikaner's case, which is quoted as under :-

"5. The learned counsel strongly relied upon the judgement in Prabhavati Devi Vs. Union of India. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in regular post, his widow became eligible to claim the benefits of the pension scheme; Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the Railway establishment. Obviously, he was screened and was also appointed to the temporary status but

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instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, the Court had held that the widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgement of this Court in Union of India Vs. Sukanti wherein relying on the ratio in Ram Kumar case this Court held that no retiral benefit was available to the widow of the casual labour who had not been regularised till his death. Thus, we hold that the view taken by the Tribunal granting the pensionary benefits to the respondents is clearly illegal".

7. For the above the respondents cannot be directed to provide relief sought for. However, the competent authority in the respondents' establishment may consider the case of the applicant in the light of the observations by their Lordships at Hon'ble Supreme Court in Civil Misc. Application No.31378 of 1988 in writ petition nos. 15863-15906/1984 - Ram Kumar Vs. UOI & Ors, a copy of which has been produced by the learned counsel for the applicant which is being retained on record. The OA is disposed of accordingly with no order as to costs.



Member (J)

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